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Report No. D-2010-024

November 24, 2009

Inspector General

United States
Department of Defense



Contracted Advisory and Assistance Services for the
U.S. Army Future Combat Systems

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Acronyms and Abbreviations

| | |
|--------|---|
| AEC | U.S. Army Evaluation Center |
| ATEC | U.S. Army Test and Evaluation Command |
| BPA | Blanket Purchase Agreement |
| C4ISR | Command, Control, Communications, Computers, Intelligence, Surveillance, and Reconnaissance |
| CSC | Computer Sciences Corporation |
| DOT&E | Director of Operational Test and Evaluation |
| DTC | U.S. Army Developmental Test Command |
| ETAS | Engineering and Technical Analysis Support |
| FAR | Federal Acquisition Regulation |
| FCS | Future Combat Systems |
| FFRDC | Federally Funded Research and Development Centers |
| GAO | Government Accountability Office |
| IG | Inspector General |
| IPT | Integrated Product Team |
| JT&E | Joint Test and Evaluation |
| LSI | Lead Systems Integrator |
| NewTec | New Mexico Technology Group |
| NLOS | Non-Line-Of-Sight |
| OCI | Organizational Conflict of Interest |
| OTC | Army Operational Test Command |
| SAIC | Science Applications International Corporation |
| SDD | System Development and Demonstration |
| RDECOM | Research, Development, and Engineering Command |
| TRADOC | United States Army Training and Doctrine Command |



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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ARLINGTON, VIRGINIA 22202-4704

November 24, 2009

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE ACQUISITION,
TECHNOLOGY, AND LOGISTICS
AUDITOR GENERAL, DEPARTMENT OF ARMY
DIRECTOR OF OPERATIONAL TEST AND EVALUATION

SUBJECT: Contracted Advisory and Assistance Services for the U.S. Army Future Combat Systems (Report No. D-2010-024)

We are providing the report for review and comment. This audit was initiated in response to allegations made to the Defense Hotline relating to the operational test and evaluation of the U.S. Army Future Combat Systems. We considered comments from the Director, Defense Procurement and Acquisition Policy; the Army; and the Director of Operational Test and Evaluation on a draft of this report in preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The comments received from the Department of the Army and the Director of Operational Test and Evaluation were partially responsive. Therefore, we request additional comments from the Department of the Army on Recommendation 2.a and the Director of Operational Test and Evaluation on Recommendation 3.a by December 30, 2009.

If possible, please send a .pdf file containing your comments to aud.acm@dodig.mil. Copies of the management comments must contain the actual signature of the authorizing official. We are unable to accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Questions should be directed to Mr. Richard B. Jolliffe at (703) 604-9201 (DSN 664-9201).

Mary L. Ugone
Deputy Inspector General
for Auditing

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Results in Brief: Contracted Advisory and Assistance Services for the U.S. Army Future Combat Systems

What We Did

We initiated this audit in response to allegations made to the Defense Hotline relating to the operational test and evaluation of the U.S. Army Future Combat Systems (FCS). The complainant alleged that the Director of Operational Test and Evaluation (DOT&E) had inappropriately awarded a contract for engineering and technical analysis support to the Science Applications International Corporation (SAIC) because it was also participating in system development.

To address the allegations, we reviewed whether the same contractors that participated in the development of the FCS were also involved in the operational testing of the systems (section 2399, title 10, United States Code, "Operational Test and Evaluation of Defense Acquisition Programs). We also reviewed whether contractors had organizational conflicts of interest (OCIs) as defined in the Federal Acquisition Regulation (FAR) by providing systems engineering and technical direction related to the FCS in light of their involvement in the development of the systems (FAR Subpart 9.5, "Organizational and Consultant Conflicts of Interest").

What We Found

The Defense Hotline allegations were substantiated. DOT&E has used SAIC as its primary commercial contractor for advisory and assistance services since 1999 even though SAIC and The Boeing Company serve as Lead System Integrators (LSIs) for system development and demonstration (SDD) of the FCS. Further, the solicitation and contract provisions for DOT&E's requirements explicitly stated "offerors and providers are excluded from this contract who have significant involvement in development of DoD systems that are under, or will be under DOT&E oversight." SAIC contended that the SDD contract was a "systems integration contract, not a development (supply-the-system or maintain-the-system) contract;" however, total contract expenditures through December 31, 2007, of \$11.4 billion are from the Research, Development, Test, and Evaluation appropriation. DOT&E, the FCS Program Office, and the Army test agencies frequently used the same contractors for advisory and assistance services that were developing the FCS. In FY 2007,

SAIC and four other services contractors received about \$91.0 million in funding for advisory and assistance services even though these contractors were involved in the SDD efforts for the FCS. DOT&E and the Army did not exercise the good judgment and sound discretion needed to prevent the existence of conflicting roles that might bias a contractor's judgment or provide it an unfair competitive advantage. See Appendix B for a detailed discussion of the hotline complaint.

We commend the contracting officer for the U.S. Army Test and Evaluation Command for taking swift action during the audit to delete the FCS-related tasks from its contract after concluding that SAIC had statutory OCIs regarding those tasks.

What We Recommend

The FCS Program Office needs to discontinue obtaining advisory and assistance services from SAIC, an FCS developer, unless appropriate waivers are obtained.

DOT&E and the Army test agencies need to determine whether it is appropriate to obtain advisory and assistance services from a contractor that has significant involvement in the development of systems that they are or will be overseeing, and if necessary, follow the appropriate waivers procedures and also determine whether these requirements would be more appropriately met by Government employees.

DoD needs to develop a standard OCI clause, which precludes contractors involved in the development, production, or testing of a system for a military department from providing technical advice to the program office for that system or from participating in activities impacting the operational test and evaluation of that system unless appropriate waivers are obtained.

Management Comments and Our Responses

We received fully responsive comments from the Director, Defense Procurement and Acquisition Policy. We request additional comments from the Army on Recommendation 2.a. and from DOT&E on Recommendation 3.a. by December 30, 2009. Please see the recommendations table on the back of this page.

Recommendations Table

| Management | Recommendations Requiring Comment | No Additional Comments Required |
|---|-----------------------------------|-----------------------------------|
| Defense Procurement and Acquisition Policy | | 7.a and b |
| Department of the Army | 2.a | 1.a and b, 2.b, and 4 through 6.b |
| Director of Operational Test and Evaluation | 3.a | 3.b |

Please provide comments by December 30, 2009.

Review of Internal Controls

DoD Instruction 5010.40, “Managers’ Internal Control (MIC) Program Procedures,” January 4, 2006, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of those controls. We identified internal control weaknesses with DOT&E and Army controls over the award and administration of advisory and assistance services contracts. Specifically, the procedures used by those organizations to prevent contractors from providing advice on scopes of work for which their judgment may be biased as a result of other activities or relationships they may possess were ineffective. Implementing Recommendation 7 will improve the internal control weaknesses identified in this report. We will provide a copy of this report to the senior official responsible for internal controls within DOT&E and the Department of Army.

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Introduction

We initiated this audit in response to allegations made to the Defense Hotline relating to the operational test and evaluation of the U.S. Army Future Combat Systems (FCS). Specifically, the complainant alleged the Director of Operational Test and Evaluation (DOT&E) inappropriately awarded a contract to the Science Applications International Corporation (SAIC) for engineering and technical analysis support (ETAS) even though the contractor was participating in the development of the FCS. The contract solicitation organizational conflict of interest (OCI) clause specifically prohibited contractors that participated in the development or production of weapon systems from submitting bids.

Objectives

The overall objective of the audit was to determine whether the same engineering and technical analysis (services) contractors that participated in (or are participating in) the development, production, or testing (developmental) of the FCS were also involved in the operational testing of the systems. The scope of the audit was expanded after we determined that SAIC was also under contract to provide advisory and assistance services to the FCS program office and various Army test agencies. See Appendix A for a discussion of the scope and methodology, and prior audit coverage. See Appendix B for a detailed discussion of the hotline allegations.

Background

In an April 30, 1962, report to President John F. Kennedy on Government contracting for Research and Development, the Director, Bureau of the Budget found that:

Some other standards are now widely accepted – for example, the undesirability of permitting a firm which holds a contract for technical advisory services to seek a contract to develop or to supply any major item with respect to which the firm has advised the Government.

The report also found that:

The management and control of such programs must be firmly in the hands of full-time Government officials clearly responsible to the President and the Congress. With programs of the size and complexity now common, this requires that the Government have on its staff exceptionally strong and able executives, scientists, and engineers fully qualified to weigh the views and advice of technical specialists, to make policy decisions concerning the types of work to be undertaken, when, by whom, and at what cost, to supervise the execution of work undertaken, and to evaluate the results.

Organizational Conflicts of Interest

Federal Acquisition Regulation (FAR) 2.101 defines the term “OCI” as:

...because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.” [emphasis added]

According to the FAR, an “OCI” occurs when factors create an actual or potential conflict of interest on an instant¹ contract or when the nature of the work to be performed on the contract creates an actual or potential conflict of interest on a future acquisition. In the latter case, restrictions on future activities of the contractor may be required.

Restrictions on Contractors Providing Systems Engineering and Technical Direction

Federal Acquisition Regulation. FAR Subpart 9.5, “Organizational and Consultant Conflicts of Interest,” prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving OCIs. The general rules in FAR 9.505-1 through 9.505-4 prescribe limitations on contracting as a means of avoiding, neutralizing, or mitigating OCIs that might otherwise exist in the stated situation. FAR 9.505-1, “Providing systems engineering and technical direction,” places restrictions on contractors being placed in a position to make decisions that favor their own products or capabilities. Specifically, the section states:

(a) A contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for its development, its integration, assembly, and checkout, or its production shall not—

(1) Be awarded a contract to supply the system or any of its major components; or

(2) Be a subcontractor or consultant to a supplier of the system or any of its major components.

(b) Systems engineering includes a combination of substantially all of the following activities: **determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical direction includes** a combination of substantially all of the following activities: **developing work statements, determining parameters, directing other contractors’ operations, and resolving technical controversies.** In performing these activities, a contractor occupies a highly influential and responsible position in determining a system’s basic concepts and supervising their execution by other contractors. **Therefore this contractor should not be in a position to make decisions favoring its own products or capabilities.** [emphasis added]

FAR 9.508 provides some examples to illustrate situations in which questions concerning OCI may arise. The examples are not inclusive but are intended to help contracting officers apply the general rules in 9.505 to individual contracting situations.

In addition, FAR 9.503, “Waiver,” allows an Agency Head to waive the general rules. Specifically, the section states:

The agency head or a designee may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government’s interest. Any request for waiver must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or a designee. Agency heads shall not delegate waiver authority below the level of head of a contracting activity.

¹ An existing or current contract.

Weapons Systems Acquisition Reform Act of 2009. Section 207 of the Weapons Systems Acquisition Reform Act of 2009, “Organizational Conflicts of Interest in Major Defense Acquisition Programs,” May 22, 2009, requires that no later than 270 days after the date of the enactment of this Act, the Secretary of Defense must revise the Defense Supplement to the FAR to provide uniform guidance and strengthen existing requirements for organizational conflicts of interest by contractors in major Defense acquisition programs. At a minimum, the guidance must:

- address OCIs that could arise as a result of lead system integrator contracts and the ownership of business units performing systems engineering and technical assistance functions or management support services by contractors who simultaneously own business units competing to perform as either the contractor or the supplier of a major subsystem or component of a major Defense acquisition program,
- ensure that DoD receives advice on system architecture and systems engineering matters with respect to major Defense acquisition programs from federally funded research and development centers or other sources independent of the prime contractor, and
- prohibit contractors from performing systems engineering and technical assistance functions for a major Defense acquisition program and also participating as a prime contractor or major subcontractor in the development or construction of a weapons system.

See Appendix C for the complete text of Section 207 of the Act.

The Panel on Contracting Integrity is developing recommendations to eliminate or mitigate OCIs in major defense acquisition programs for the Secretary of Defense’s use in preparing the revised guidance. We briefed the panel on a draft of this report on July 9, 2009.

Restrictions on System Developers Performing Operational Test and Evaluation

Section 2399, title 10, United States Code (10 U.S.C. Section 2399), as implemented by Public Law 101-189, November 29, 1989, “Operational Test and Evaluation of Defense Acquisition Programs,” places further restrictions on system developers supporting operational test and evaluation. Specifically, the subsection (e), “Impartial Contracted Advisory and Assistance Services,” states:

- (1) The Director may not contract with any person for advisory and assistance services with regard to the test and evaluation of a system if that person participated in (or is participating in) the development, production, or testing of such system for a military department or Defense Agency (or for another contractor of the department of Defense).
- (2) The Director may waive the limitation under paragraph (1) in any case if the Director determines in writing that sufficient steps have been taken to ensure the impartiality of the contractor in providing the services. The Inspector General of the Department of Defense shall review each waiver and shall include in the Inspector General’s semi-annual report an assessment of those waivers made since the last such report.

(3)(A) A contractor that has participated in (or is participating in) the development, production, or testing of a system for a military department or Defense Agency (or for another contractor of the Department of Defense) may not be involved (in any way) in the establishment of criteria for data collection, performance assessment, or evaluation activities for the operational test and evaluation.

To date, the Director of Operation Test and Evaluation has never sent a waiver to the DoD Inspector General (IG).

Director of Operational Test and Evaluation

The Director of Operational Test and Evaluation is the principal staff assistant and advisor to the Secretary and Deputy Secretary of Defense on program acquisition test and evaluation-related matters within DoD. The Director:

- prescribes policies and procedures for the conduct of operational tests, live fire test and evaluations, and the composition and operations of the major ranges and test facility bases;
- analyzes the results of operational test and evaluation, live fire test and evaluations, and the test and evaluations conducted on major Defense acquisition programs; and
- coordinates operational tests conducted jointly by more than one DoD Component.

Army Test and Evaluation Command

The Army Test and Evaluation Command (ATEC) is responsible for ensuring the Army's warfighters go to war with weapons that work. It is the only organization within DoD to provide full spectrum testing by overseeing both developmental and operational testing as well as the evaluation of test data. It operates through three fully integrated major subordinate commands: the Army Developmental Test Command (DTC), the Army Operational Test Command (OTC), and the Army Evaluation Center (AEC).

- DTC plans, conducts, and reports on developmental, production, and live fire tests across the full spectrum of environments; verifies military systems safety; develops and procures new test technology, test instrumentation, and related models and simulations; and manages the mission elements at assigned test centers.
- OTC plans and conducts independent operational testing and experiments of acquisition systems operated by representative users in a realistic operational environment in order to provide essential information to the decisionmaking process on a system's operational effectiveness, suitability, and survivability.
- AEC plans and conducts independent evaluations and assessments of acquisition programs; develops the evaluation strategy, test design, and evaluations addressing operational effectiveness, suitability, and survivability; and provides evaluation information to decisionmakers for equipping and sustaining the total force.

The command emphasizes conducting developmental and operational testing simultaneously to become more value-added to today's war effort by saving time in providing test data and analysis to senior decisionmakers. With that goal in mind, ATEC establishes combined test organizations to integrate the developmental and operational test planning for each weapon system, share test resources, and minimize the duplication and time required to execute the testing of a weapon system.

Future Combat Systems Vision

In October 1999, the Secretary of the Army and the Chief of Staff of the Army outlined a vision designed to posture the Army to better meet the demands of the 21st Century. The U.S. Army Transformation Campaign Plan defined the vision in December 1999. The goal of U.S. Army transformation is the creation of a strategically responsive, precision maneuver force that achieves dominance across the full range of military land operations in any future conflict.

The foundation of this future force is a maneuver brigade combat team equipped with the FCS. FCS will operate as a system that networks existing systems, systems already under development, and new systems to be developed to meet the requirements of the Army's future force brigade combat team. FCS will be capable of conducting a wide range of military activities and operations, such as deterring large-scale aggression, participating in small-scale contingencies, and dealing with asymmetric threats like terrorism, information operations, and nuclear, biological, or chemical environments. The FCS will be lighter and more transportable and deployable with characteristics that will enable the force to be anywhere on the globe within 36-48 hours and be capable of conducting operations (without pause for preparation) to dominate and defeat a mission-based threat. Further, an FCS-equipped brigade combat team will be capable of fighting in all environments, day or night, and in any weather conditions and of operating in complex urban terrain including negotiating barricades, roadblocks, city rubble, man-made and natural craters, and narrow passages.

Concept Design and Technology Development

On May 9, 2000, the Defense Advanced Research Projects Agency and the Army entered into Other Transaction Agreements, in accordance with Section 845 of the 1994 National Defense Authorization Act, Public Law 103-160, as amended, with four industry teams,² to create the revolutionary ground force outlined in the Defense Planning Guidance for FY 2000 through 2005. During this phase of the program, the technological concepts and solutions for the Army's Objective Force were developed. The Defense Advanced Research Projects Agency and the Army competed system design ideas and evaluated and selected key promising combat vehicle technologies, such as lethality, propulsion, mobility, survivability, robotics, ergonomic, and Command, Control, Communications, Computers, Intelligence, Surveillance, and Reconnaissance (C4ISR) technologies for inclusion into

² The Boeing Company, Team Gladiator (TRW and Lockheed Martin), Team Full Spectrum (SAIC, United Defense, L.P., ITT, and Northrop Grumman), and Team Focus Vision (General Dynamics Land Systems, Raytheon, and Honeywell).

potential combat vehicle platforms and production of the selected system of systems prototype.

In January 2002, The Boeing Company (Boeing) and SAIC entered into an agreement to jointly pursue the contract to develop FCS because their senior management felt that together they could offer the Government the best solution for FCS, and thus, had a higher probability of being selected to develop the system. On March 14, 2002, the Defense Advanced Research Projects Agency awarded Other Transaction Agreement MDA972-02-9-0005 to The Boeing Company, and its industry teammate, SAIC to serve as the Army's Lead Systems Integrator (LSI) for the FCS Program. The selection ended the concept design phase during which the four industry teams developed the innovative concepts used to refine the draft requirements for the FCS. Under this agreement, the Boeing-SAIC team entered into an alliance with the Government to develop, manage, and execute all aspects of the FCS Program through concept and technology development. This included developing the architecture for the system of systems envisioned for the FCS, identifying and evaluating potential concepts and technologies, conducting demonstrations and selecting the most promising efforts for further definition, and developing and implementing an integrated test and evaluation program. The agreement also included an option for the system development and demonstration phase of the program.

System Development and Demonstration

On May 30, 2003, the U.S. Army TACOM Life Cycle Management Command (then known as the U.S. Army Tank-Automotive and Armaments Command) entered into Other Transaction Agreement DAAE07-03-9-F001 with the Boeing-SAIC team to exercise the option included in the concept and technology development agreement. Under this agreement, the Boeing-SAIC team continued executing the program tasks for Increment I of the system development and demonstration phase of the FCS Program. On August 6, 2004, the Army modified the system development and demonstration phase agreement to require the Boeing-SAIC LSI team to also introduce the FCS capabilities into the current force as the capabilities of the program were developed, as opposed to delivering them at contract completion. On September 30, 2005, the TACOM Life Cycle Management Command converted the other transaction agreement into a FAR-based contract (contract W56HZV-05-C-0724).

As shown in Figure 1, the FCS was composed of a family of 14 advanced manned and unmanned air- and ground-based maneuver, maneuver-support, and sustainment systems³ interconnected through a networked battle command architecture. FCS includes unmanned aerial and ground vehicles, unattended sensors and rockets, manned vehicles, and a network that links all systems together.

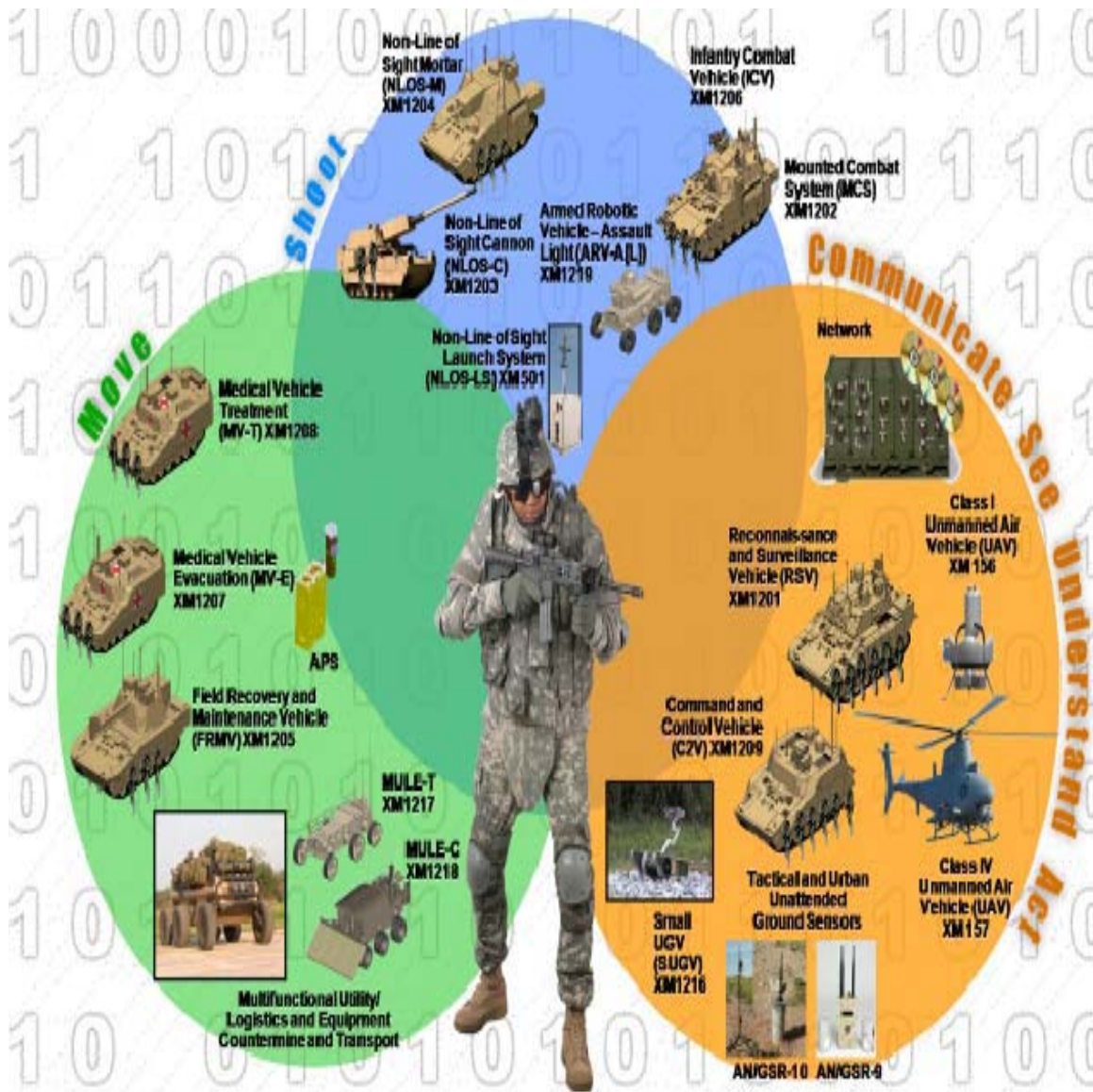


Figure 1. The Future Combat Systems

The FCS was estimated to cost about \$159 billion over the life of the program.

³ Eight manned ground vehicles, two classes of unmanned ground vehicles, two classes of unmanned aerial vehicles, unattended tactical and urban ground sensors, and a non-line-of-sight launch system.

Table 1 identifies the Boeing-SAIC System Development and Design team and identifies the scope of work that each team member is responsible for.

| Table 1. FCS System Development and Design Team | |
|--|---|
| <u>Contractor</u> | <u>Work Scope</u> |
| Boeing-SAIC | Lead System Integrators |
| BAE Systems | Armed Robotic Vehicle, Manned Ground Vehicles, Air & Ground Communication Integration |
| General Dynamics | Manned Ground Vehicles, Autonomous Navigation System, Sensor Data Management, Integrated Computer System |
| iROBOT | Small Unmanned Ground Vehicle |
| Lockheed Martin | Centralized Controller, Armed Robotic Vehicle, Multifunctional Utility/Logistics & Equipment vehicles, Non-Line-of-Sight Launch System, Training Instrumentation Architecture |
| Northrop Grumman | Class IV Unmanned Aerial Vehicle, Logistics Decision Support System, Network Management System |
| Honeywell International Inc | Class I Unmanned Aerial Vehicle, Soldier Mission Readiness System |
| Textron Systems | Unattended Ground Sensors and Tactical and Urban Ground Sensors |
| Raytheon | Ground Sensor Integration, Non-Line-of-Sight Launch System, Battle Command & Mission Execution |
| Computer Sciences Corporation | Training Support Package |
| Dynamics Research Corporation | Training Support Package |
| IBM | Logistics Data Management System |
| Overwatch Systems | Situational Understanding |

Revised FCS Program

As a result of strategic decisions in formulating the Defense portion of the FY 2010 President's Budget, the Under Secretary of Defense canceled the FCS Brigade Combat Team Acquisition Program. In its place, the Under Secretary directed the Army to transition its modernization plan to a plan consisting of a number of integrated acquisition programs, including:

- One program to produce and field the first seven Spin-Out Early Infantry Brigade Combat Team unit sets;
- One or more major defense acquisition programs to include a major Defense acquisition program for follow-on brigade combat team modernization to develop, produce, and field required unmanned systems, sensors, and networking for the remaining combat brigades;
- One major Defense acquisition program to continue developing and fielding incremental ground tactical network capability; and
- Another major Defense acquisition program to develop ground combat vehicles.

Finding. Contracted Advisory and Assistance Services

DOT&E, the FCS Program Office, and the Army test agencies frequently used the same services contractors for advisory and assistance services⁴ that were developing the FCS. In FY 2007, five services contractors were paid about \$91.0 million for advisory and assistance services. Those contractors were also paid about \$8.7 billion to develop the FCS. This occurred because:

- solicitation provisions and contract clauses used to prevent contractors from providing advisory and assistance services for systems they helped develop or produce were inadequate and ineffective, and contractor disclosures of potential OCIs were vague;
- Government contracting agencies' technical evaluations of potential OCIs were not effective, waiver requests were not submitted when conflicts existed, and waiver requests and decisions were not included in contract files; and
- policies, procedures, and internal control changes recommended in DoD Inspector General Report No. 91-115, "Consulting Services Contracts for Operational Test and Evaluation," August 22, 1991, related to OCIs and the extensive use of services contracts were never fully implemented.

As a result, DOT&E and the Army have not exercised the good judgment and sound discretion needed to prevent the existence of conflicting roles that might bias a contractor's judgment or provide an unfair competitive advantage, as required by 10 U.S.C. 2399, "Operational Test and Evaluation of Defense Acquisition Programs," and FAR Subpart 9.505-1, "Providing Systems Engineering and Technical Direction."

Contracting Officers' Responsibility for Avoiding OCIs

FAR Subpart 9.5 directs contracting officers to take measures to detect and avoid or neutralize actual and potential OCIs. Specifically, FAR Subpart 9.504, "Contracting Officer Responsibilities," states that:

- (a) Using the general rules, procedures, and examples in this subpart contracting officers shall analyze planned acquisitions in order to —

⁴ FAR Subpart 2.101 defines "advisory and assistance services" as those services provided under contract by nongovernmental sources to support or improve organizational policy development, decisionmaking, management and administration, program and/or project management and administration, or research and development activities. Advisory and assistance services can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures and are classified into one of the following definitional subdivisions: management and professional support services, studies, analyses and evaluations, or engineering and technical services.

- (1) Identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and
- (2) Avoid, neutralize, or mitigate significant potential conflicts before contract award.

(b) Contracting officers should obtain the advice of counsel and the assistance of appropriate technical specialists in evaluating potential conflicts and in developing any necessary solicitation provisions and contract clauses.

.

(d) In fulfilling their responsibilities for identifying and resolving potential conflicts, contracting officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation. The contracting officer's judgment need be formally documented only when a substantive issue concerning potential organizational conflict of interest exists.

(e) The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided or mitigated. Before determining to withhold award based on conflict of interest considerations, the contracting officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond. If the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding a conflict of interest, a request for waiver shall be submitted in accordance with 9.503. The waiver request and decision shall be included in the contract file.

In addition, FAR Subpart 9.505, "General Rules," states:

Conflicts may arise in situations not expressly covered by contracting limitations prescribed in [FAR Subpart] 9.505 or in the examples in [FAR Subpart] 9.508. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists, and, if it does, the development of the appropriate means for resolving it. The two underlying principles are—

- preventing the existence of conflicting roles that bias a contractor's judgment and
- preventing unfair competitive advantage.

Developing a System and Providing Advisory and Assistance Services

DOT&E, the FCS Program Office, and the Army test agencies frequently used the same contractors for systems engineering and technical direction and advisory and assistance services that were developing the FCS.

As Table 2 shows, five services contractors received an estimated \$91.0 million in funding during FY 2007 for advisory and assistance services that also received an estimated \$8.7 billion to develop the FCS.

| Table 2. Amount of Funding Received by Contractors Supporting the Development, Program Management, and Operational Testing and Evaluation of FCS (in millions) | | | | | | |
|--|---------------|-----------------------------|-------------------------|-----------------------------|----------------------------|---------------|
| | <u>SAIC</u> | <u>Northrop Grumman</u> | <u>CSC¹</u> | <u>General Dynamics</u> | <u>Lockheed Martin</u> | <u>Total</u> |
| System Development | | | | | | |
| System Design and Development Contract | \$2,258.7 | \$1,755.5 | \$54.0 | \$3,981.1 | \$648.0 | \$8,697.3 |
| Advisory and Assistance Services | | | | | | |
| FCS PO | 1.8 | | | | | 1.8 |
| Army DTC | <u>0.6</u> | <u>1.3</u> ² | <u>7.6</u> ² | <u> </u> | <u>4.0</u> ² | 13.5 |
| Subtotal | \$2.4 | \$1.3 | \$7.6 | \$0.0 | \$4.0 | \$15.3 |
| OT&E Related | | | | | | |
| DOT&E | 17.5 | | | | | 17.5 |
| ATEC | 0.8 | | | | | 0.8 |
| Army OTC | | | 42.0 ³ | 7.0 | | 49.0 |
| AEC | <u>5.1</u> | <u>3.3</u> | <u> </u> | <u> </u> | <u> </u> | 8.4 |
| Subtotal | \$23.4 | \$3.3 | \$42.0 | \$7.0 | \$0.0 | \$75.7 |
| Total Services | \$25.8 | \$4.6 | \$49.6 | \$7.0 | \$4.0 | \$91.0 |
| <p>1 Computer Sciences Corporation.</p> <p>2 Northrop Grumman, CSC, and Lockheed Martin provide support to DTC through their New Mexico Technology Group joint venture. Per the terms of their joint venture agreement, all three companies share in the profits derived from company. In FY 2007, the group [REDACTED]</p> <p>3 CSC support to OTC through its Test and Experimentation Services Company joint venture. In 2007, the Test and Experimentation Services Company [REDACTED]</p> <p>According to OTC, CSC's partner, Electronic Warfare Associates, performs the work and receives all the profits for FCS-related work.</p> | | | | | | |

Solicitation provisions and contract clauses used to prevent contractors from providing advisory and assistance services for systems they helped develop or produce were inadequate and ineffective, and contractor disclosures of potential OCIs were vague. Government contracting agencies' technical evaluations of potential OCIs were also not effective; waiver requests were not submitted when conflicts existed; and therefore, waiver requests and decisions were not included in contract files.

SAIC

During 2007, SAIC was under contract to help develop FCS, as well as to provide advisory and assistance services to the FCS Program Office, a number of the U.S. Army test commands, and DOT&E.

FCS Development

SAIC received an estimated \$2.3 billion for the work it performed to support FCS developmental activities. SAIC and its industry teammate, Boeing, serve as the LSI for the FCS program. Per the terms of its subcontract, SAIC provides support across the broad spectrum of LSI tasks. These include managing and administering a number of the program's major subcontracts, helping develop the architecture for the system of systems envisioned for the FCS, assisting in identifying and evaluating potential concepts and technologies, and conducting demonstrations and helping select the most promising efforts for further definition. SAIC is also helping the Army develop, manage, and execute all aspects of the FCS program to include performing the necessary program and engineering management activities, implementing the system of systems requirements into the networked family of systems, and coordinating and performing integrated family of systems and system of systems demonstration and test planning, execution, and evaluation. SAIC's responsibilities constitute about [REDACTED] percent of overall work effort for the FCS program.

Providing Advisory and Assistance Services

FCS Program Office

SAIC also provided advisory and assistance services related to FCS through four other contract actions that the FCS Program Office funded. The FY 2007 funding for the contract actions was \$1.8 million.

Support Provided Through the AMCOM Express Blanket Purchase Agreement.

SAIC provided advisory and assistance services related to FCS under three task orders issued against the AMCOM Express Blanket Purchase Agreement (BPA) W31P4Q-05-A-0031.

Task Order 3: Under Task Order 3 of the BPA, the FCS Program Office funded work related to system safety, safety of flight, and accident findings and recommendations response functions of the AMCOM Safety Office. Specifically, SAIC was assigned to provide personnel to manage and execute various tasks including:

2.4. **Safety Risk Assessments.** The contractor shall evaluate system safety issues defined by the COR [Contracting Officer Representative] and provide safety risk assessment based upon the current and expected condition, and provide alternatives for risk reduction or elimination. At the direction of the COR the Contractor shall analyze and consolidate residual hazards and attendant System Safety Risk Assessments for input into Manpower and Personnel Integration (MANPRINT) System Safety domain reports.

Task Order 5: Under Task Order 5 of the BPA, the FCS Program Office funded work related to system engineering and test support for the unmanned aerial vehicles and the non-line-of-sight launch system (NLOS-LS), FCS missile server support and maintenance, and Command Control Collaborative Environment data verification and network support. For example, Modification 69 added funding for SAIC to perform the following tasks under Technical Instruction S137044, “Systems Engineering and Test Support for Unmanned Aerial Systems:”

3.1 The contractor shall provide systems analysis and technical recommendations for the purpose of resolving conflicts identified during requirements analysis, decomposing functional requirements and allocating performance requirements during functional analysis, evaluating the effectiveness of alternative design solutions and selecting the best design solution during synthesis, assessing systems effectiveness, and managing risk factors throughout the systems engineering effort and product life cycle.

3.2 The contractor shall support the UAVS developmental and operational demonstration, test and evaluation, including flight testing. The contractor shall assist in the development of test plans; execution of test programs; collection and analyses of systems performance data, and reporting of data, including conclusions and recommendations.

In addition, Modification 90 added funding for SAIC to perform the following tasks under Technical Instruction S137063, “FCS Missile Server support and Maintenance:”

3.0 Scope: The contractor shall provide the following services in support of the AMRDEC’s [U.S. Army Aviation and Missile Command Research, Development, and Engineering Center’s] System Simulation and Development Directorate (SSDD):

3.1 Collaborate with M-IT at Fort Belvoir to maintain awareness of and participate in MATREX integration activities.

3.2 Provide electronic deliveries of the Missile Server federated software needed to satisfy FCS software requirements specification for the Missile Server component and in support of MATREX integration and testing activities.

3.3 Perform Missile Server software debugging and troubleshooting in support of MATREX integration activities.

3.4 Research the usage of the xTCRS terrain approach and provide the long lead time and effort support costs to the LSI as preparation work in compliant with the terrain effort and compatibility.

In addition, Modification 92 added funding for SAIC to perform the following tasks under Technical Instruction S167027, “NLOS-LS:”

3.0 Scope: The contractor shall provide the following services in support of the AMRDEC’s System Simulation and Development Directorate (SSDD):

3.1 Evaluate available models for the NLOS-LS [Non-Line-of-Sight Launch System] with the PAM (based on Government-furnished information about those models) to identify which is best suited for integration and OneSAF to meet the requirements of expected uses.

3.2 Coordinate with PM NLOS-LS and their technical staff to integrate the identified model for the NLOS-LS system with PAM into OneSAF.

3.3 Coordinate with PM NLOS-LS and their technical staff to support external M&S activities, including but not limited to the Redstone Technical Test Center (RTTC). Continue to advocate for the proper NLOS-LS representation within RDECOM initiatives such as MATREX.

3.4 Coordinate with other contractors to optimize high fidelity simulation representations with regard to system performance, operational reality, and tactical credibility for the NLOS-LS system with the PAM.

Task Order 8: Under Task Order 8 of the BPA, the FCS Program Office funded systems engineering and computer resource engineering support conducted by the U.S. Army Research, Development, and Engineering Command's Software Engineering Directorate. For example, Modification B8 added funding for SAIC to perform the following tasks under Technical Instruction 017-6D, "NLOS [Non-Line-of-Sight] Software Engineering Support:"

The contractor shall provide the following services for the NLOS Software Engineering Support effort:

1. This effort will consist of systems and software engineering support. Provide representation for all project office and prime contractor working groups, reviews, configuration control boards, meetings, test events and audits. Participate in the development of concept, installation and test of hardware for the NLOS-LS.
2. The contractor shall provide non-system specific software support which will consist of software development, system facilities assessments and analysis, systems and hardware/software analysis, and automated tools that will improve software development productivity. The contractor shall participate in any and all software process improvement activities conducted at the Software Engineering Directorate.
3. The contractor shall provide resolution to computer resource LCSE issues, provide software engineering support, and perform technical evaluations and studies associated with non-system specific LCSE application including Information Assurance (IA) support.

In addition, Modification BH added funding for SAIC to perform the following tasks under Technical Instruction 0117-7A, "NLOS-LS:"

Under this task, the contractor will perform the following activities to ensure that the NLOS-LS system meets all applicable interoperability and information assurance requirements when communicating within FCS or current force environments and that troop are sufficiently trained in the operation of NLOS-LS and the command and control systems used to direct NLOS-LS.

- Develop Operational Architectures in the OV, TV, SV and AV formats to support NR-KPP.
- Develop Information Support Plan to support NR-KPP.
- Maintain Interface Control Document (ICD)
- Update Interface Control Document to incorporate SOSCOE and XML data exchange library
- Write/Update/Maintain NLOS-LS Tactics, Techniques and Procedures
- Support Interoperability Working Groups
- Represent PM NLOS-LS at VMF subgroup and major forums.
- Develop VMF Interface Change Proposals for SWB based on increased system capabilities

- Submit and represent PM NLOS-LS at VMF Software Configuration Control Boards
- Review NLOS-LS related FCS documents such as the IRD and IRS for PM NLOS-LS
- Review SOSCOE requirements for NLOS-LS needed Information Exchange Requirements
- Develop test cases and execute test plans based on define architectures and functionality
- Exercise Operational Architectures in the SMART lab to validate proper implementation of requirements in FOS, AFATDS, CLU and PAM software.
- Provide SME support during live fire testing with AFATDS/Control Cell support
- Develop I&KP / NET training for leaders and AFATDS operators and conduct training.
- Provide members for NET teams during initial HBCT/IBCT fielding
- Support milestone decisions with required Information Assurance and software accreditation documentation.
- Support the writing of waivers and documents to support material release for system of systems.
- Support doctrinal exercises with troops to support material release and assessments for DOT&E
- Act as PM NLOS-LS IV&V for NLOS-LS C2 requirement testing
- Support IOT&E training and ramp up testing
- Provide SME support and training for Ground and Flight LUT
- Support FCS experiments and simulations

In addition, Modification BR added funding for SAIC to perform the following tasks under Technical Instruction 95-7A, “FCS SW [Software] Support:”

1. Contractor support shall be provided to the FCS program with specific emphasis on software development, modeling and simulation (M&S), and software integration and test activities at the system of system (SoS) level.
2. The contractor shall support the program by performing technical assessments of software requirements, software processes, software documentation, and related technical data.
3. The contractor shall work to identify gaps and issues in respect to the planning and execution of the FCS program. This will be accomplished through the assessment of program and software development schedules. Once these gaps are identified the contractor shall identify possible solutions and make recommendations for their resolution.
4.
5. The contractor shall perform analyses and assessments of software Interface requirements Specifications (IRS) and Interface Design Documents (IDD) to identify the problems associated with FCS interfaces.

In addition, Modification BT added funding for SAIC to perform the following tasks under Technical Instruction 0172-7A, “AMRDEC [Aviation and Missile Research Development and Engineering Center] Future Force S&T Planning:”

The Contractor shall provide experienced senior technical support and consultation to the SED in support of the Aviation and Missile Research Development and Engineering Center (AMRDEC) in the areas of Aviation, Missile and Unmanned Systems technology (S&T) plans and roadmaps; future joint operational capabilities projections and gap assessments,

user requirements; system studies and analyses required to define and defend research plans; coordination of research initiatives and tenets with US Army requirements developers, materiel developers, and senior executives throughout the Joint and Army S&T communities; workgroups, committees, IPTs, and “Greybeard” panels that initiate, plan, coordinate, critique and/or execute S&T opportunities, investment strategies/partnerships, and technical approaches; development and analysis of system performance specifications; and subject matter expertise on senior science and technology boards that cut across Army and Joint Service roles, missions, and requirements. The contractor shall leverage existing relationships with Users, S&T, requirements and materiel developer personnel and organizations to advise and support the AMRDEC in the planning, defense, and execution of its S&T mission. The contractor must have detailed familiarity with ongoing and planned AMRDEC programs and personnel to facilitate the communication and coordination required. The contractor shall support tasks such as unmanned systems technology transition to the warfighter, future system development functional area analysis, functional need analysis, functional solution analysis, mission need assessment and determination, requirements analysis, system concept design studies, cost-performance tradeoff analysis, analysis of alternative solutions, feasibility analysis, regulatory compliance support, staff training and professional development, privatizations and outsourcing. (CDRL A002)

The following specific tasks shall be conducted.

Provide liaison to and work with operational units such as SOCOM HQ, XVIII Airborne Corps (Ft Bragg) and III Corps as well as Army Training and Doctrine Command (TRADOC) organizations, particularly Ft Benning and Ft Rucker, Ft Bliss and Ft Sill to define, plan, coordinate, prepare, and/or review technical and programmatic documents required to create, establish, justify, and conduct Future Force oriented advanced S&T initiatives/programs for the purpose of determining feasibility of advanced system technology concepts and associated warfighting capabilities with the objective of transitioning technology to the warfighter as quickly as possible. (CDRL A002)

Through such liaison and coordination, assist in developing future science and technology initiatives that have clear linkage to warfighting requirements and Force Operating Capabilities and support activities that assure that these requirements accurately influence science and technology funding for Small Business Innovative Research (SBIR) topics, Advanced Technology Objectives (ATOs), Advanced Technology Demonstrations (ATDs), and Advanced Concept Technology Demonstrations (ACTDs). The contractor shall facilitate or assist in frequent coordination between AMRDEC offices and staff and the appropriate TRADOC Directorates for Combat Development, Battle Labs and HQ TRADOC staff to synchronize/harmonize their linkage. Coordination shall include attendance at meetings, reviews and demonstrations. The contractor shall review ongoing AMRDEC technology programs for relevance to user needs in order to focus priority on those programs most likely to have the earliest and greatest impact on deploying units’ war fighting capability.

Provide staff support to the SED in the development of overall S&T strategy and program concepts to ensure near-term as well as strategic planning is commensurate with and sufficient to meet the Army’s Force Operating Capabilities (FOCs) and/or Future Army and Joint Force capabilities. Specific near-term initiatives include, but are not necessarily limited to: “Smaller, Lighter and Cheaper” Missile initiatives, Unmanned System Initiative (USI), future Army and Joint Missile or Directed Energy weapons, aerial system survivability/active protection and integrated lethality/survivability suite developments, and unmanned system operations/teaming including weaponization and remote, collaborative engagements. The range of support will cover both Aviation and Missile S&T and associated technology transition to the PEO/PM. Support shall also include evaluation of reports, and technical and administrative support for these initiatives.

In addition, Modification CE added funding for SAIC to perform the following tasks under Technical Instruction 0395-7A, “SOSCOE [System of Systems Common Operating Environment] Sustainment Planning:”

2. Assigned Task: Under this task, the contractor shall produce and deliver a report that provides specific recommendations and strategies for the wider deployment, and life cycle sustainment of FCS SOSCOE [System of Systems Common Operating Environment] across existing and planned Army systems. The report shall provide an initial assessment of which existing and planned Army system are potential candidates for SOSCOE deployment.

OCI Solicitation and Contract Clause. To obtain unbiased technical support, AMCOM incorporated the following OCI clause in the solicitation issued for the AMCOM Express BPA.

(b) The parties hereto recognize that performance of such services creates potential organizational conflicts of interest as addressed in Federal Acquisition Regulation Subpart 9.5, Organizational and Consultant Conflicts of Interest. It is the intention of the parties that the contractor shall not engage in any contractual activities which could cause a conflict of interest with its position under this blanket purchase agreement which may impair its ability to render unbiased advice and recommendations or in which it may have an unfair competitive advantage as a result of the knowledge, information, and experience gained during the performance of this blanket purchase agreement.

The clause language made it clear that the Government did not want the contractor it used to fulfill the BPA’s requirements from engaging in activities that could impair the contractor’s ability to render unbiased advice and recommendations or give it an unfair competitive advantage as a result of the knowledge, information, and experience gained during the performance of the BPA. The clause also contained the following passage that required potential offerors to self-identify any relevant facts that might diminish their capacity to give impartial, technically sound, and objective assistance and advice or that could result in providing them an unfair competitive advantage relative to the work performed under the blanket purchasing agreement and again with any proposal submitted in response to any task order requests for quotation.⁵

(c) The contractor shall identify all relevant facts concerning any past, present or planned interest (financial, contractual, organizational, or otherwise as contractor, subcontractor, or consultant) relating to the work to be performed under the blanket purchase agreement and bearing on whether the offeror has a possible conflict of interest with respect to being able to render impartial, technically sound, and objective assistance or advice, or being given an unfair competitive advantage. In the absence of any such interest, the contractor shall submit a written statement which represents to the best of its knowledge and belief that it does not presently have any organizational conflict of interest which would diminish its capacity to give impartial, technically sound and objective assistance and advice or would result in a biased work product or may result in an unfair competitive advantage. A list of categories and representative examples of Aviation Missile Command/Program Execute Office missions covered by the blanket purchase agreement is set forth at Attachment 02. It

⁵ The BPA included two attachments that provided potential offerors a high-level overview of the command’s technical support requirements and provided a current list of categories and representative examples of the Army missions that potential offerors may be tasked to support. The NLOS-LS was identified as one of the Army missions that potential offerors may be tasked to support.

is the contractor's responsibility to identify to the Government any contracts they possess for these systems as a prime contractor, as a subcontractor, or as a consultant with either the weapon system prime contractor or major subcontractor.

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(m) The contractor shall include in any response to a task order request for quotation issued pursuant to this BPA, information concerning any work or contracts the contractor has been involved in during the past three (3) years, whether as a prime contractor, subcontractor, or consultant, relative to the categories and representative examples of Aviation and Missile Command/Program Executive Office missions set forth at Attachment 02, in order to ensure that no task order will be issued to a contractor where such past work would create an actual or potential conflict of interest.

OCI Disclosure and Government Evaluation. SAIC included the following passage in the proposal it submitted to fulfill the technical requirements outlined in the solicitation for the AMCOM Express BPA:

PPI 13: Describe concisely all relevant facts concerning any past, present, or planned interests relating to the work to be performed. We have validated that no SAIC organization, and no Team Member or Subcontractor on the SAIC Express Team, has any past, present, or planned Conflict of Interest or unfair competitive advantage with respect to the services to be provided under this BPA.

The SAIC BPA proposal also contained the following statement:

Should any actual, potential, or perceived conflict of interest be identified, we work with all involved parties to develop a mitigation plan for AMCOM review and approval. Should the mitigation plan not be approved, we neutralize the conflict through (1) direct award to a Team Member, (2) subcontracting all work to a Teammate (SAIC retains TO lead), or (3) not bidding the TORFQ [task order request for quotation] opportunity. For all TORFQs (whether or not a conflict exists), SAIC requests participating Team Members and Subcontractors to submit OCI disclosures and certifications.

In addition, the cover letters that the SAIC Contracts Manager used to submit the company's quotations for Task Orders 3, 5, and 8 included the following statements:

Task Order 3

No Organizational Conflicts of Interest (OCIs) exists and our OCI Certificate has been provided in accordance with proposal instructions.

Task Orders 5 and 8

No Organizational Conflicts of Interest (OCIs) exist and the OCI Certifications for SAIC and all our teammates are provided in accordance with TORFQ Instructions.

We discussed the disclosures with representatives from SAIC. They indicated the descriptions of the work contained in the BPA and task orders were too broad for their company to reasonably conclude that it possessed any OCI with respect to the tasks being performed under the three task orders. They further stated that SAIC was not in a position to tell whether it had an actual OCI with the work being performed until after the technical instructions were issued by the contract officer to provide the details for the specific tasks to be performed under the orders. In addition, we did not find any documentation to support that any of the contracting officers for the AMCOM Express task orders conducted

independent evaluations on their own at any point in the process to determine if potential issues existed that would hinder SAIC's ability to provide advisory and assistance services related to FCS-related systems. As a result, FCS Program Office personnel stated they were unaware that some of the scopes of work that AMCOM awarded to SAIC on the command's behalf under AMCOM Express BPA W31P4Q-05-A-0031 Task Orders 3, 5, and 8 were related to the FCS Program.

Support Provided Through the U.S. Army Tank-Automotive and Armaments Command – Armaments, Research, and Development Center. SAIC also provided systems engineering support related to FCS under a task order issued against Contract W15QKN-04-D-0001. The contract was issued to acquire the full range of consulting, analytical, software, and hardware services for the U.S. Army Tank-Automotive and Armaments Command's Armaments, Research, and Development Center; as well as the program management offices headquartered at Picatinny Arsenal, New Jersey.

Task Order 9. Under Task Order 9, SAIC provided systems engineering support to the program management element responsible for the FCS Lethality. The Program Manager for FCS Lethality is responsible for the Lethality Integrated Product Team (IPT), multiple manned ground vehicle variants, and their associated complimentary programs. The following was identified in the task order as one of the tasks to be performed during the performance of the task order:

3.3 Risk Management through Test and Evaluation (T&E)

3.3.1 The contractor shall assist the PM in assessing program risk management through evaluation of proper T&E management.

Measure – The contractor shall (1) evaluate FCS contractor/government Test and Evaluation Strategies developed through the [Test and Evaluation] integrated product team and the program Test [and] Evaluation Master Plan (TEMP); (2) Evaluation of key test related FCS documents (Phase Plans, ITEP, Data Management Plans); (3) Evaluation of FCS Contractor Test Plans and Reports.

3.3.2 The contractor shall support Combined Test Organization (CTO) meetings and Integrated Systems Test IPT meetings

Measure – The contractor shall attend or participate in CTO and IS&T [Integrated System Test] meetings through attendance or Webex and will express the views interests and concerns of the PM Lethality Test Manager

OCI Solicitation and Contract Clause. The solicitation that the U.S. Army Tank-Automotive and Armaments Command's Armaments, Research, and Development Center used to request proposals from contractors interested in fulfilling the command's consulting, analytical, software, and hardware services requirements contained the following clause addressing prospective offerors' OCIs.

Upon receipt of this purchaser order, the contractor shall conduct a review of actual or potential Organization Conflict of Interest [OC of I] as defined in and within the meaning

of FAR 9.505 General Rules. If in the opinion of the Contractor no OC of I exists, the Contractor shall so notify the Contracting Officer (and provide justification in support of its opinion). If in the opinion of the Contractor the performance of work under this purchase order will involve an actual or potential OC of I, the Contractor shall notify the Contracting Officer and provide justification in support of its opinion. In either event the Contracting Officer will determine whether a task does involve an [OCI]. If the Contracting Officer determines that an OC of I exists, the Contractor/Subcontractor shall not perform said order unless the parties agree to the restrictions imposed by FAR 9.505 General Rules. The contractor shall require any Subcontractor that performs any work relative to this purchase order to comply with this requirement.

The OCI clause indicates that the Government did not want a contractor with potential OCIs to perform the scope of work covered by the contract unless the parties agree to the restrictions imposed by FAR Subpart 9.505's general rules.

OCI Disclosure and Government Evaluation. SAIC did not address OCIs in the proposal it submitted for contract W15KN-04-D-0001. Further, we were unable to determine how the contracting officer concluded that no potential issues existed that would hinder SAIC's ability to provide the advisory and assistance services related to the overall contract or the specific scope of work SAIC performed under Task Order 9. There was no documentation in the contracting file to indicate how the issue was addressed. We discussed the lack of disclosure with representatives from SAIC. They stated that the Government knew about the situation and the specific tasks being performed. They also stated that the command also used other system developers to perform the tasks and that it was the group's opinion that an individual company's influence would be cancelled out by those of the other companies.

A contractor that provides systems engineering and technical direction for a system shall not be awarded a contract to supply the system or any of its major components or be a subcontractor or consultant to a supplier of the system or any of its major components. (FAR Subpart 9.505-1, "Providing systems engineering and technical direction")

The FCS Program Office needs to discontinue obtaining advisory and assistance services from SAIC, an FCS developer, unless a waiver is obtained from the agency head, and the waiver request and decision are included in the contract file.

Developmental Test Command

DTC also funded two other contract actions with SAIC for advisory and assistance services related to the FCS. The FY 2007 funding for the actions was \$0.6 million.

Support to the DTC. DTC used SAIC to perform FCS-related activities under BPA W91ZLK-06-D-0001. The goal of the BPA was to provide general test, evaluation, analysis, and report generation support for various military systems undergoing test and evaluation to ensure timely completion and technical quality.

Delivery Order 14. Under Delivery Order 14 of the contract, SAIC was tasked to provide technical support for “all FCS-related activities” at the DTC and its related test centers. Specifically, under Delivery Order 14:

2. The contractor shall perform the following tasks:

a. Provide test and evaluation expertise across the following commodity areas: Tank-automotive, armament, Soldier, Command Control Communications (C3), Intelligence Electronic Warfare (IEW), Nuclear, Chemical, Biological, General Equipment, Air Delivery, Soldier Support, Aviation, Missile, Unmanned, Fire Support, Future Force, and related Integrated Systems.

b. Provide non-personal, technical services support to DTC. Primary areas of technical services support include, but are not limited to: assistance in the timely planning, testing, evaluation, analysis, and report generation with assured technical quality involving various military systems and [items under test] assigned to DTC.

c. Provide non-personal, technical services support to other DTC test centers, ATEC subordinate commands, and other DoD or U.S. government agencies with whom DTC or ATEC is either supporting or working. Areas of technical services support include, but are not limited to: timely planning, testing, evaluation, analysis, database development and maintenance, document and report generation and assistance in the development, verification, validation, and accreditation of test methodologies, analytical tools, and processes used in support of test and evaluation

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e. Provide the following technical requirements:

(1) Plan Development. The contractor shall assist in preparing test plans [e.g., Test and Evaluation Master Plan (TEMP), event design plans (EDP), detailed test plans (DTP), and test technology plans (e.g., Instrumentation Development and Acquisition Plan (IDAP) to include type of tests, proposed schedule, and estimated cost.

(2) Archive Data & Information. The contractor shall distill test data into validated engineering analyses and derivative program management information and archive all three in the VISION Digital Library (VDL) as required.

OCI Solicitation and Contract Provisions. The OCI provisions included in BPA W91ZLK-06-D-0001 effectively placed no restriction on the technical support that SAIC could perform for the DTC. Specifically, the BPA contained the following OCI provisions.

The offeror is hereby advised that the Contracting Officer has concluded that the proposed acquisition may involve potential organizational conflict(s) of interest under the rules prescribed in Federal Acquisition Regulation Subpart 9.5. The nature of the perceived potential conflict and the proposed restraint upon future contractor activities are set forth in the proposed Section H clause titled "Organizational Conflict(s) of Interest Clause." The proposed contract clause and the application of Federal Acquisition Regulation Subpart 9.5 are subject to negotiation.

Although the clause advised that the scope of work to be performed under the contract had potential for OCI, this section was never incorporated into the BPA to disclose the nature of the perceived potential conflict or to outline the restrictions on SAIC’s future activities.

In addition, the clause did not require that a contractor's potential OCIs be reevaluated at the time each delivery order was awarded.

OCI Disclosure and Government Evaluation. SAIC included the following passage in the proposal it submitted addressing its lack of potential OCIs with respect to its ability to perform the technical requirements outlined in the BPA solicitation:

In order to fulfill OCI requirements set forth in Clause L14 of Section II of the RFP, SAIC routes the Government's new SOW through our Corporate OCI System. SAIC has received no OCI (conflicting) responses to date. Should an OCI response occur, SAIC will immediately investigate the conflict, begin mitigation discussions, and alert the Government. All measures will be taken to resolve the issue to the satisfaction of all parties.

We were unable to determine if the contracting officer performed any evaluation beyond accepting statements made in SAIC's proposal to determine if potential issues existed that would hinder SAIC's ability to provide unbiased advisory and assistance services related to the overall contract or the specific scope of work SAIC performed under Delivery Order 14. There was no documentation in the contracting file to show how the issue was addressed.

Support to the Redstone Technical Test Center. The DTC's Redstone Technical Test Center used SAIC for FCS support under the AMCOM Express BPA W31P4Q-05-A-0031, Task Order 18. The objective of the task order was:

1.0 MISSION OBJECTIVE: The Redstone Test Center (RTTC) requires support for identification and documentation of capabilities and developments within RTTC which have reasonable potential for application to Advanced Test Technology (ATT) applications with specific attention to Future Combat System (FCS) systems/subsystems/components; focusing primarily on sensors and robotics (unmanned systems). This task also includes providing expertise in identifying the planned FCS simulation and test events, throughout the FCS System Design and Development (SDD) phase, which provide the best opportunities for RTTC support, focusing primarily on systems and below (subsystems and components) opportunities. Facilitate in the development of a process to identify and secure potential FCS Test and Evaluation (T&E) and ATT development opportunities for RTTC is intrinsically part of this task. Support for documenting an operational architecture and roadmap to guide development and/or integration of RTTC advanced capabilities for application to ATT development and FCS is also required. This architecture and roadmap will serve as a plan for structuring disparate activities across RTTC into a cohesive effort and must inherently address activities for verification, validation and accreditation (VV&A), distributed testing, standards, integration and other associated issues necessary to enable RTTC capabilities for timely application to ATT development and FCS T&E. This task requires extensive integration and collaboration within RTTC Virtual Proving Ground (VPG) activities to ensure relevancy to planned and ongoing VPG architecture, synthetic environments, tools, and integrated information systems as well as outside organization test technology thrust areas. While support from this requirement is intended for advanced test technology development and FCS T&E applications, it is expected that the processes identified and documentation developed will be applicable to RTTC support for similar Future Army T&E activities. The contractor, as an independent contractor and not as an agent or employee of the Government, shall be required to provide a broad level of technical expertise in support of this task for RTTC.

OCI Solicitation and Contract Provisions and OCI Disclosure and Government Evaluation. The same procedures were followed for Task Order 18 as were previously described for the three orders issued against the AMCOM Express BPA W31P4Q-05-A-0031.

DTC needs to determine whether it is appropriate to obtain advisory and assistance services from SAIC or any other contractor that has significant involvement in the development of DoD systems unless a waiver is obtained from the agency head and the waiver request and decision are included in the contract file as required by FAR Subpart 9.5.

Operational Test and Evaluation Activities

Director of Operational Test and Evaluation

DOT&E has used SAIC as its primary commercial contractor for advisory and assistance services since 1999 through a number of contract actions. DOT&E funded work related to engineering and technical analysis (ETAS) support and to support the Joint Test and Evaluation (JT&E) Program. During FY 2007, DOT&E added \$17.5 million to three contract actions to obtain those advisory and assistance services.

ETAS Support. DOT&E stated it uses the ETAS contract for non-10 U.S.C. 2399 responsibilities and federally funded research and development centers⁶ to carry out 10 U.S.C. 2399 responsibilities. However, some of the support provided by SAIC under the ETAS contract raises concerns that the non-10 U.S.C. 2399 work may be indirectly crossing over into the 10 U.S.C. 2399 arena. While no operational testing related to FCS had been conducted at the time of our fieldwork, a number of tasks performed under the delivery orders issued to SAIC against contract W91CRB-04-D-0009 causes concern. Specifically, SAIC provides the following support to the DOT&E Principal Deputy under Delivery Order 0207:

Technical and Analytical Support – The contractor shall provide technical support for the analysis, review and evaluation of current and proposed test and evaluation policies, processes, training, infrastructure and resources including but not limited to the following areas as directed by the government:

- Managerial support for the formation, promulgation, and implementation of a Testing in a Joint Environment Roadmap that addresses those changes necessary to ensure that T&E is conducted in a joint environment to enhance the fielding of joint capabilities
- Research and analysis of test and training range resource requirements as related to joint test, training and experimentation for DoD components as well as other Federal agencies, and review of OSD-led management processes designed to facilitate the

⁶ Federally funded research and development centers (FFRDC) are activities that are sponsored under a broad charter by a Government agency (or agencies) for the purpose of performing, analyzing, integrating, supporting, and/or managing basic or applied research and/or development, and that receive 70 percent or more of their financial support from the Government; and—(1) A long-term relationship is contemplated; (2) Most or all of the facilities are owned or funded by the Government; and (3) The FFRDC has access to Government and supplier data, employees, and facilities beyond what is common in a normal contractual relationship.

acquisition of joint and interoperable instrumentation systems and architectures that support the interoperability of ranges and range instrumentation

- Major Range and Test Facilities Base oversight and policy coordination with the Defense Test Resource Management Center, to include collecting information, monitoring activities, studies, and analysis
- Test and Evaluation training to include T&E workforce and professional staff training requirements, delivery methods, and interface/coordination with the OSD efforts to integrate test and training with support for the DTTSG and the Test and Training Roadmaps
- Senior technical support to the Office of the [Secretary of Defense, Life Fire Test and Evaluation (LFT&E)] providing analysis of past LFT&E programs, plans, procedures, and methodologies to identify lessons learned and best practices

SAIC provides technical analysis support relating to land warfare to the DOT&E, Action Officers, and Deputy Directors under Delivery Order 0407:

Integrated Resource Analysis Task - The contractor shall provide the Director, OT&E, and staff with support and analysis of test and evaluation (T&E) program resource adequacy and planning across all aspects of the DOD acquisition system and DOD's test and evaluation infrastructure. This will include support of OSD Oversight Acquisition Programs (and other related ancillary acquisition programs) and all related test and evaluation test planning and resource development activities. Support will include attendance at various meetings/conferences and involve travel from DOT&E. Tasks will include:

- Analyzing requirements documents for Oversight Programs and capabilities to determine the impact on future test resources.
- Reviewing, analyzing, and supporting DOT&E staff oversight of Test Strategies and TEMPS for Oversight Programs and capabilities to determine possible impact on future test resources.
- Monitoring program progress and influence T&E [test and evaluation] strategy specifically focused on test resource adequacy with DOT&E staff by participating in program working groups and IPTs as required.
- Conducting Major Decision Point assessment of System Resource Adequacy to support program Major Decision Points and Operational Test readiness forums.
- Analyzing test resource adequacy issues and synergies across warfare areas based on individual assessments and other warfare area studies.
- Assisting in the management of the Target Management Initiative (TNII) Program for DOT&E.
- Monitoring and attaining core competency for targets and other T&E surrogates, maintaining a close working relationship with the Threat System Office, including its INTEL function.
- Participating in and supporting various DOT&E, Central Test and Evaluation Investment Program (CTEIP), and Service resource investment forums.
- Conducting specialty systems and warfare area assessments and studies oriented toward program and infrastructure resources shortfalls and issues.
- Other related test resource analysis tasks, as directed by the Action Officers and Deputy Directors.

SAIC also provided technical analysis support to the Deputy Director, Naval Warfare and Net Centric Systems, DOT&E for conducting operational evaluations of the information operations, interoperability, and information assurance of DoD systems under Delivery Order 0507. The support includes:

This task will provide technical and analytic support to the Deputy Director, Naval Warfare & Net Centric Systems, DOT&E, for the conduct of operational evaluations of the information operations, interoperability and information assurance of DoD systems primarily, but not exclusively, and in conjunction with Service and Combatant Command exercises, as described below. This task will also support the development of methodologies, policy, and plans for OT&E of military information operation capabilities.

Operational Evaluation of the Interoperability and Information Assurance of DoD Systems - Contractor will provide DOT&E a team of qualified technical personnel for research and analysis in the definition, design, planning, conduct, and analysis of Information Operations (IO), Information Assurance (IA), and Interoperability (Io) directly and indirectly affecting the capabilities of the Services, components, and agencies of the Department of Defense. Contractor will provide the following technical and analytical support of special studies and the operational evaluation of IO, IA, and Io of DoD systems and associated test and exercise capabilities:

- Conduct visits to Unified Commands and assist in the planning and execution of IO, IA and Io assessments during Combatant Command Exercises
- Assist DOT&E with IO, IA, Io related special studies and analyses.
- As directed by the Government, participate in and/or provide support to conferences, training, and meetings
- Support DOT&E in preparation for conferences with Services, Combatant Commanders, Operational Test Agencies, Information Warfare Commands, the National Security Agency, and others
- Ensure a system is established to capture relevant information in an electronic database that organizes and provides key information to the Government that is easily accessible.

OCI Solicitation and Contract Provisions. The U.S. Army Robert Morris Acquisition Center issued a Request for Quotations to solicit industry proposals for fulfilling DOT&E's requirements. The Request for Quotations contained the following clause that was incorporated into the contract to exclude offerors with significant involvement in the development of DoD systems that DOT&E oversees from being considered for the award. Section C, "Descriptions and Specifications," Part 10.0, "Organizational Conflict of Interest," states:

Offerors and providers are excluded from this contract who have significant involvement in development of DoD systems that are under, or will be under DOT&E oversight. An OCI Mitigation Plan will be developed by the contractor within 90 days of contract award, approved by the government, and implemented.

The contracting officer also issued Amendment 0003 to the solicitation to clarify the clause after receiving a question from industry.

[Question] Are offerors with an OCI in fact excluded, or are they permitted to compete provided they have an acceptable mitigation plan?

Answer: **Offerors and providers who have significant involvement in development of DoD systems that are under, or will be under, DOT&E oversight are excluded from this contract. Significant involvement means plain-and-simple exclusion. Those offerors who do not have significant involvement, or have no involvement, still must develop an Organizational Conflict of Interest (OCI) Mitigation Plan. [emphasis added]**

OCI Disclosure and Government Evaluation. Although the Army FCS Program was a listed program on the DOT&E Official Test and Evaluation Oversight List, SAIC stated, in the proposal it submitted to fulfill DOT&E's requirements, that it had a long history of supporting DOT&E with no OCI issues. SAIC also used FCS as an example to demonstrate its procedures for preventing relationships or arrangements from creating OCIs. Specifically, SAIC stated that:

SAIC has a long history of working closely with DOT&E. Since the award as a prime supporter of the OMNIBUS contract in 1989, SAIC has continued successively to be a major partner on the ETAS I and ETAS II contracts.

At the OSD [Office of the Secretary of Defense] level, SAIC analyzes and performs research in support of development and promulgation of key DOT&E policies and guidance memoranda, including DoD Directive 3200.11, Major Range and Test Facility Base, DoD Directive 5000.1, and DoD Directive 5000.59, Modeling and Simulation Management. SAIC research also supports major programs like the Central Test and Evaluation Investment Program (CTEIP), the Threat Systems Office (TSO), and the Test and Evaluation Science and Technology (T&E/S&T) program. SAIC also was a key contributor to the reorganization effort that transferred oversight responsibility for the CTEIP, TSO, counter-countermeasures office (CCM), and other functions to DOT&E.

DOT&E cannot risk any disruption, workload burden, or cost impact associated with OCI due to industry consolidations, merger and acquisition, or other corporate business ventures. **SAIC believes there are no current OCI issues.** SAIC has implemented two key measures to protect DOT&E against any potential OCI risk: an organizational structure that prevents OCI issues from occurring, and a valid, proven OCI plan. We have isolated the test and evaluation business unit supporting the ETAS contract organizationally from any other business within the company providing services, such as lead systems integrator. The thoroughness of this isolation and provisions of our OCI plan are further detailed in attachment II using Future Combat System as an example. Additionally, we already have in place a contracting officer approved OCI plan implemented under the current ETAS contract. OCI mitigation is critical to the preservation of DOT&E's unbiased T&E oversight responsibilities, and, therefore, integral to performance risk of this contract. ... **We have supported DOT&E on the last two contracts without any real or perceived OCI issues. [emphasis added]**

The OCI Avoidance and Mitigation Plan identified in the passage downplays the true extent of SAIC's involvement in the development of the FCS and makes the argument that any OCIs created by their LSI subcontract work for The Boeing Company were eliminated through the company's business isolation techniques. Specifically, in an attachment outlining its OCI Avoidance and Mitigation Plan, SAIC states:

SAIC understands the Organizational Conflict of Interest (OCI) concerns and the restrictions set forth in 10 U.S.C. section 2399(e)(3)(A). SAIC has reviewed the ETAS III Statement of Work and each of the approved Task Orders for potential OCI.

Significantly, the scope of the ETAS III contract does not include support for the assessment or evaluation of specific acquisition programs on the DOT&E oversight list. DOT&E carefully guards this function and has reserved the assessments and evaluation of the systems on the oversight list specifically to the Institute for Defense Analyses, a government Federally Funded Research and Development Center (FFRDC).

While SAIC is a large company involved in a broad range of programs, the SAIC Team does not anticipate work in support of the ETAS contract and associated Task Orders will create the possibility of a perceived, potential or real OCI. However, if the SAIC/ Government Task Planning Advisory Group ... identifies the possibility for a real or perceived OCI, measures will be taken to safeguard against an OCI occurring. The SAIC Team is confident that an OCI will not be an issue with this contract.

SAIC is the primary commercial subcontractor to Boeing for the Future Combat System (FCS) Lead System Integrator (LSI) contract. This is a systems integration contract, not a development (supply-the-system or maintain-the-system) contract. [emphasis added]

This contract is a nontraditional acquisition program in which the role of LSI is somewhat analogous to that of a program office. The LSI team, with Boeing as the lead contractor and SAIC the primary commercial subcontractor will:

- Work in partnership with the Army and Defense Advanced Research Projects Agency (DARPA)
- Have systems integration responsibility for the FCS program.

Because Boeing and SAIC will conduct competitive procurements with the Army and DARPA, a stringent government-approved OCI Mitigation Plan and organizational isolation ground rules are in effect.

- An SAIC FCS program directive that covers all SAIC employees and consultants is in place.
- SAIC employees supporting the FCS Program Office operate behind a firewall that protects competitive, sensitive information (physically and organizationally).
- Individuals are tracked by name and employee number and are restricted from supporting other divisions within the company that pose potential conflicts.
- Individuals working behind the firewall must sign three firewall acknowledgement forms, which cover competition-sensitive information, competitive proposal information, and competitive subcontracts proposal compliance.
- Any personnel supporting FCS in the LSI role must be in the FCS dedicated division, i.e., inside the firewall.

It is important to note that the scope of the ETAS Team's support does not include any Title 10 U.S.C. evaluations as defined by paragraph 3.0 of the [Statement of Work]. The Current request for quotations (RFQ) explicitly forbids ETAS support from performing any Title 10 weapon system evaluations and calls this area out exclusively to the FFRDCs (i.e., IDA). Our Integrated Resource Assessment Team (IRAT), does assist the conventional systems deputate in non-Title 10 assessments of the adequacy of test resources (range infrastructure, targets, and threat systems) in support of numerous OT&E programs, including FCS, but does not conduct assessments per Title 10 restrictions. However, to avoid any perception of OCI regarding the FCS program, the SAIC ETAS team has recused itself from any

involvement in IRAT support regarding FCS, in accordance with our government-approved OCI plan.

- All ETAS IRAT work on FCS is done by an unencumbered subcontractor, ARI.
- ARI reports directly to the government technical representatives and takes direction only from those representatives, not from SAIC.
- Deliverables are provided directly to the government by ARI.
- SAIC receives only the cover letter, not the technical product.
- Monthly progress and required financial reports are provided by ARI to SAIC. No written or verbal data is shared that could be construed as a potential OCI.

The language included in The Request for Quotations indicates that the Government did not want system developers fulfilling the contract's requirements. However, the proposal that SAIC submitted understates the company's involvement in FCS development. SAIC stated in its proposal that by rigorously adhering to the measures it "intended to preserve the ability of other SAIC organizations other than the ETAS Division to seek and perform the work they might otherwise be precluded from pursuing as a result of the restrictions set for in the contract's OCI clause."

We found no evidence that anyone evaluated whether SAIC was significantly involved in the development of a DoD system that DOT&E was or would be overseeing prior to contract award. According to the contracting officer, DOT&E did not see a conflict with awarding the contract to SAIC because it had previously been fulfilling the requirements under a bridge contract that was entered into after the previous prime contractor was dropped after being acquired by Northrop Grumman, another FCS systems developer. Only after an inquiry was made was the issue of how the Government reached its conclusion that SAIC's participation in the development of the FCS did not violate the OCI clause contained in the solicitation examined. Although both of the companies that submitted proposals were involved in developing FCS, the U.S. Army Robert Morris Acquisition Center contracting officer did not place either company on the excluded list. Furthermore, on April 26, 2004, the Army awarded SAIC a 5-year time-and-materials indefinite-delivery, indefinite-quantity contract with a not-to-exceed value of \$60 million for engineering and technical analysis services after it was determined that SAIC's proposal represented the best value.

JT&E Support. SAIC also provided advisory services for joint test and evaluation programs conducted by DOT&E under BPAs F08635-02-A-0010 and W91C9G-07-D-0002. Joint test and evaluation programs are process-focused rather than product-focused test and evaluation activities conducted in a joint military environment and they review such things as the joint techniques, tactics, and procedures associated with already fielded systems. The purpose of these studies, tests, and evaluations is to:

- bring two or more Services together to provide improvements in joint interoperability of Service systems;
- improve technical and operational concepts;
- improve performance of systems;

- validate testing methodologies; and
- gather data for validating models, simulations, and test beds.

The support that SAIC provides for each study, test, or evaluation conducted under the blanket purchasing agreements includes:

establishing, organizing, and supporting the Joint Test Force (JTF) Directorates; designing, planning, and executing tests; analyzing test results and documenting findings and conclusions in formal, written reports; transitioning test products and ownership to designated customers, and closing-down the joint test organization.

OCI Solicitation and Contract Clauses. The solicitations for the BPAs contained the following clauses to address prospective offerors' potential OCIs:

BPA - F08635-02-A-0010

The following restrictions and definitions apply to prevent conflicting roles which may bias the Contractor's judgment or objectivity, or to preclude the Contractor from obtaining an unfair competitive advantage in concurrent or future acquisitions.

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Restrictions: The Contractor shall perform systems engineering and/or technical direction, but will not have overall contractual responsibility for the system's development, integration, assembly and checkout, or production. The parties recognize that the Contractor shall occupy a highly influential and responsible position in determining the system's basic concepts and supervising their execution by other Contractors. The Contractor's judgment and recommendations must be objective, impartial, and independent. To avoid the prospect of the Contractor's judgment or recommendations being influenced by its own products or capabilities, it is agreed that the Contractor is precluded for the life of the system from award of a DoD contract to supply the system or any of its major components, and from acting as a subcontractor or consultant to a DoD supplier for the system or any of its major components.

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The Contractor agrees to accept and to complete issued delivery orders, provided that no new organizational conflicts of interest are created by the acceptance of that order. The Contracting Officer shall identify the organizational conflict of interest in each order. The Contractor shall not contract with Government prime Contractors or first-tier subcontractors in such a way as to create an organizational conflict of interest.

BPA - W91C9G-07-D-0002

Since DOT&E has the authority for performance and assessment of military hardware, any offeror (and all subcontractors, teaming partners, consultants, etc.) that is a producer of hardware with a Defense contractor poses a potential conflict of interest.

An organizational conflict of interest (OCI) issue is a significant consideration that can prevent the government from awarding a contract to an offeror. It is possible through the submission of an acceptable mitigation plan, however, for an offeror to sufficiently reduce the risks associated with an OCI such that contract award can occur.

All offerors shall comply with the provisions of Federal Acquisition Regulation (FAR) Subpart 9.5, Organizational and Consultant Conflicts of Interest. Any offerors that have a potential conflict of interest are required to submit an Organizational Conflicts of Interest (OCI) Mitigation Plan to avoid or mitigate all significant potential OCIs.

The Government intends to avoid, neutralize, or mitigate significant conflicts of interest before contract award.

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The government will treat all OCI submissions as proprietary and protect the proposed information accordingly. If no potential conflicts exist, the offeror shall expressly state that "No OCI issues exist; therefore, no mitigation plan is provided".

In addition, each order issued against the BPAs contained the following OCI clauses:

BPA - F08635-02-A-0010

In accepting and performing work required by this task order the contractor certifies that such work does not constitute or will not create a conflict of interest due to any other work performed by the corporation.

BPA - W91C9G-07-D-0002

In providing a proposal for performance of the effort required by this task order, the contractor certifies that either:

- No OCI issues exist;
- OCI issues have been addressed in contract OCI Mitigation Plan.

OCI Disclosure and Government Evaluation. We believe both blanket purchasing agreement's OCI clauses are insufficient. According to the DOT&E, JT&E Program Manager, SAIC would not have an OCI unless FCS or another system or program that it helped develop is proposed for a joint test. However, neither of the above clauses required SAIC to include objective information in either its blanket purchasing agreement or in its task order proposals related to other work that SAIC was or had performed for the contracting officer to analyze for potential OCIs. Instead, the clauses exclusively rely on SAIC to use its judgment to decide what does or does not constitute an OCI with no government validation unless a potential OCI is disclosed. SAIC made the following disclosures in the order proposals it submitted for contract actions associated with BPA F08635-02-A-0010.

In order to fulfill OCI requirements of the BPA, SAIC routes Government's Statements of Work through our Corporate OCI System.⁷ Currently for this opportunity, SAIC does not

[REDACTED]

have any OCI issues. However, we will provide a Mitigation Plan in the near term to mitigate any potential OCI concerns.

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In order to fulfill OCI requirements of the BPA, SAIC routes the Government's new Statements of Work through our Corporate OCI System. If we should receive an OCI response, we will immediately investigate the conflict, begin mitigation discussions, and alert the Government. All measures will be taken to resolve the issue to the satisfaction of all.

SAIC made the following statements regarding potential OCIs in the proposals it submitted for contract actions associated with BPA W91C9G-07-D-0002:

BPA

Science Applications International Corporation (SAIC), a high-technology services company, has not experienced any organizational conflict of interest (OCI) issues during performance of Joint Test and Evaluation (JT&E) projects as the prime contractor in support of JT&E Contract No. F08635-02-A-0010.

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SAIC has reviewed the JT&E Engineering Services Statement of Work (SOW) for potential OCI issues. While SAIC is a large company involved in a broad range of programs, we are principally a service provider and not a major hardware provider—hardware production is an insignificant fraction of SAIC's business.

Task Order 2

Organizational Conflict of Interest and Performance Measurement. SAIC certifies that no organizational conflict of interest issues exist for this task order. SAIC's quality approach for contract support to the JFSD [Joint Feasibility Study Director] requires that the JEPAC [Joint Electronic Protection for Air Combat] task manager and his immediate supervisors are responsible for implementing and supervising quality assurance activities and reviews, both technical and administrative.

Task Order 3

Organizational Conflict of Interest (OCI): In order to fulfill OCI requirements set forth in the provisions of Federal Acquisition Regulation (FAR) Subpart 9.5 and Contract No. W91C9G-07-D-0002, SAIC has applied all procedures associated with the SAIC OCI Mitigation Plan (Attachment 5) of Contract No. W91C9G-07-D-0002 including routing the Government's QRT [Quick Reaction Test] Statement of Work through our Corporate OCI system. SAIC has received no OCI (conflicting) responses to date. Should an OCI response occur, SAIC will immediately investigate the conflict, begin mitigation discussions, and notify the Government. All measures will be taken to resolve the issue to the satisfaction of all.

We obtained the routings and responses produced by the SAIC OCI management system for two of the FCS-related advisory services contracts.⁸ In both cases, all SAIC business units reported they had "no conflict" with the scope of work covered by the contracts.

⁸ The DOT&E Engineering and Technical Advisory Services contract W91CRB-06-D-0009 and the Army Evaluation Command Contract W91CRB-06-D-0014 previously detailed in this report.

However, based on the [REDACTED] bids that SAIC participates in each year, we believe that the individuals that SAIC dedicates to review OCI issues have limited time to make each OCI determination. Furthermore, regardless of the depth of the contractor's review, the Government needs to conduct an independent review of its own to adequately protect the Government's interest.

DOT&E needs to determine whether it is appropriate to obtain advisory and assistance services from SAIC or any other contractor that has significant involvement in the development of DoD systems that the Director is or will be overseeing. If the Director determines it is essential to use the same contractor, appropriate waiver procedures should be followed as required by Title 10 U.S.C 2399 and FAR Subpart 9.5.

Army Test and Evaluation Command

ATEC also funded work with SAIC for advisory and assistance services that related to FCS on four contract actions. The collective value of the contract actions for FY 2007 was \$0.8 million. Specifically, through BPA W91ZLK-06-D-0001 Delivery Orders 11, 16, and 17 and their follow-on contract, General Services Administration Schedule Contract 23F-0107J Order W9115U-08-F-0002, SAIC provided the following areas of general test, evaluation, analysis, and report generation support for military systems undergoing test and evaluation (including FCS):

- test and evaluation methodology support;
- threat representation in test and evaluation support;
- test technology program support;
- modeling, simulation, and instrumentation support;
- test and evaluation policy support;
- test and evaluation training support;
- cross command collaboration environment support;
- test technology program management support;
- technical review;
- plan development;
- software development;
- test results validation, analysis, and distillation support; and
- report and briefing support.

OCI Solicitation and Contract Provisions. The OCI provisions included in BPA W91ZLK-06-D-0001 effectively placed no restrictions on the test, evaluation, analysis, and report generation activities that SAIC could perform for the U.S. Army test and evaluation community. Specifically, the BPA contained the following OCI provisions:

The offeror is hereby advised that the Contracting Officer has concluded that the proposed acquisition may involve potential organizational conflict(s) of interest under the rules prescribed in Federal Acquisition Regulation Subpart 9.5. The nature of the perceived potential conflict and the proposed restraint upon future contractor activities are set forth in the proposed Section H clause titled "Organizational Conflict(s) of Interest Clause." The proposed contract clause and the application of Federal Acquisition Regulation Subpart 9.5 are subject to negotiation.

Although the OCI clause advised SAIC that the scope of work to be performed under the BPA had potential for OCI, the section was never incorporated into the BPA to disclose the specific nature of the perceived potential conflict or to outline the restrictions on SAIC's future activities. In addition, the BPA's OCI language did not require OCI determinations be made again with each scope of work added with each delivery order. Consequently, some scopes of work that SAIC could perform under Delivery Orders 11, 16, and 17 had the potential to create conflicts for SAIC in light of its FCS development efforts and would escape detection. During discussions we held with SAIC on a discussion draft of this audit report, company representatives stated that the Government used their contract vehicle for the purpose of expediting the contracting process to get the work to the Trideum Corporation. However, we were not provided nor did we find any documentation during the audit to support the company's claim that the Government directed that SAIC use the Trideum Corporation to perform the scopes of work covered by the delivery orders or that the Government had waived limitations of FAR 9.505-1.

In addition, despite the OCI provisions included in the follow-on contract (General Services Administration Schedule Contract 23F-0107J Order W9115U-08-F-0002) placing additional restrictions on a prospective contractor's eligibility to fulfill the stated requirements; SAIC was again awarded the contract to perform the tasks. The follow-on task order included the following OCI restrictions.

Title 10, US Code Section 2399 prohibits the involvement of a defense contractor in the operational test and evaluation of its own systems and equipment. Consequently, all parties must be particularly sensitive to potential, actual, or perceived organizational conflicts of interest where system contractors are or appear to be involved in the operational testing and evaluation of their own equipment or systems, including involvement as a test support contractor. Such involvement is strictly prohibited. The Contractor acknowledges that it is familiar with Title 10 U.S.C. Section 2399 and FAR 9.5 and agrees that it will avoid conflicts of interest and, to the maximum possible extent, the appearance of conflict of interest, in accordance with the principles set forth in the Statute and FAR. The contractor also acknowledges that statutory operational testing and evaluation conflicts of interest arising under 10 U.S.C. 2399 and Army Regulation 73-1, paragraph 5-6, may not be mitigated or "firewalled" using the FAR 9.5 procedures.

That language clearly states that involvement of a Defense contractor in the operational test and evaluation of its own systems and equipment is "strictly prohibited" and could not be "mitigated" or "firewalled" using FAR 9.5 procedures. The clause also contained the following passage that required SAIC to self-identify involvement in FCS development.

If performance of any requirement requires the contractor to supply technical support related to systems or projects with which the contractor is already directly concerned, either by prime or subcontract, with either another firm or the Government, including, and particularly, the cognizant DOD Program or Project Manager, the contractor shall so immediately inform the Contracting Officer. The requirement may be withdrawn in writing at the discretion of the Contracting Officer without recourse by the contractor. Such withdrawal shall be final and not subject to the "Disputes" (FAR 52.233-1) clause of this contract.

OCI Disclosure and Government Evaluation. SAIC did not address OCI in their proposal and the ATEC Mission Support Contracting Activity stated that they did not

understand the FCS involvement of the performance-based work statement. As a result, SAIC was allowed to support the ATEC mission, including providing program management support to the Cross Command Collaboration Environment Project Director and helping develop the threat representation used to test the FCS. After becoming aware of the role SAIC played in the development of FCS, the contracting officer initiated a review of the FCS support being provided under the contract and concluded that a statutory OCI existed with regard to the threat representation and the cross command collaboration support that SAIC was providing. As a result, the contracting officer issued a letter to SAIC on February 7, 2008, to notify SAIC that the contracting activity was electing to partially terminate the task order. The letter stated:

SAIC cannot as a contractor for the design and the development of the FCS, also assist in the development of the threat representation used to test the FCS. According to the scope, SAIC is instrumental in all aspects of test, evaluation, and analysis to include the timely planning, testing, test technology development and coordination; evaluation; analysis; database development and maintenance; document and report generation; and with the development, verification, validation, and accreditation of test methodologies, analytical tools, and processes used in support of test and evaluation.

Based on the above findings and in pursuant to FAR Clause 52.212-4 (1), "Termination for the Government's Convenience," the Government has elected to employ its right to partial terminate the task order for its sole convenience.

In a February 28, 2008 letter, SAIC disagreed that the support it provided under the task order presented a perceived or actual OCI with FCS. Specifically:

SAIC strongly believes that the work we are performing under this support Task Order does not present a perceived or actual conflict of interest with the Future Combat System (FCS). We respectfully provide the following information to ATEC for review and consideration.

Under the referenced Task Order, SAIC supports the Army Test and Evaluation Command (ATEC), Test Technology Directorate (TTD), whose primary mission is to synchronize ATEC's policies, methodologies, threat representation, and technologies into a unified, consistent, and repeatable approach that enables evaluators and testers to produce credible and up-to-date results. Within the scope of this support Task Order, SAIC does not test or evaluate any system. We support TTD activities that support test and evaluation.

In response to your determination of an organizational conflict of interest regarding SOW 3.2.4, Threat T&E Coordination (as stated in your termination for convenience letter, dated February 7, 2008), SAIC is not contracted by ATEC TTD to develop threat representation for FCS and or deliver the FCS Threat Test Support Package (TSP). In fact, according to Department of the Army Regulation 381-11, it is not ATEC's responsibility to develop threat representation. The FCS Threat TSP is developed by TRADOC and validated by the DA DCS, G-2. SAIC is contracted to support the Threat Accreditation Working Group process, which includes attending meetings that the ATEC Senior Threat Coordinator can not attend and reviewing threat simulator and representation specifications to ensure that the specifications meet the requirements in the Threat TSP. Therefore, SAIC strongly believes that the work we are supporting in the SOW Task 3.2.4 does not present a perceived or actual conflict of interest with FCS because SAIC does not perform the Title 10 U.S. Code Section 2399 activities of conducting operational test and evaluation; providing an advisory and assistance service with regard to the test and evaluation of FCS;

and establishing the criteria for data collection, performance assessment or evaluation activities for the operational test and evaluation of FCS.

SAIC understands that SOW 3.7, paragraph c, will be revised because SAIC is not and will not act in the capacity of the deputy project director to 3CE. SAIC strongly believes the support we provide to 3CE does not present an actual or perceived OCI issue with FCS because SAIC provides systems engineering and administrative support in the identification, development, and maintenance of a core set of M&S tools, data, and business processes to ATEC, RDECOM and TRADOC, which can be leveraged by the Army Program Managers. These support activities include developing the 3CE core capability by leading the 3CE Interoperability Team, developing and initially populating the 3CE Knowledge Repository, and conducting V&V on the 3CE Core Federation and supporting tools. These activities do not require SAIC to perform test, evaluation or analysis of the FCS operational test and evaluation. Therefore, SAIC does not have any impact in the operational test and evaluation of FCS and as a result adheres to the provisions set forth in Title 10 U.S. Code Section 2399.

SAIC is sensitive to actual or perceived organizational conflicts of interest. It is for this very reason that we make every attempt to identify and mitigate any potential OCI. SAIC is fully committed to avoiding all OCI issues by proactively implementing OCI safeguards. Our internal, Web-based OCI management system is in-place to provide corporate-wide visibility, queries, and responses for this purpose.

We have taken every precaution to avoid any OCI and in doing so we have found no threat of an organizational conflict of interest in the performance of the work under this support Task Order. SAIC respectfully requests reconsideration based upon the specific facts highlighted herein...

On March 28, 2008, the contracting officer issued the ATEC Mission Support Contracting Activity's final determination and finding that the work that SAIC performed under task order W9115U-08-F-0002 constituted an OCI as defined by 10 U.S.C. 2399. The determination and finding stated:

Overall, in reviewing the SAIC response, the contractor acknowledged that they provide support by assisting ATEC TTD in test and evaluation' activities as described in the first paragraph and alleged that they do not test or evaluate any systems. Based on the Contracted Advisory Assistance Services, Category 1, Management and Professional Support Services definition cited in AR 5-14 and DoDD 4205-2, advisory and assistance services are defined as services that provide engineering or technical support, assistance, advice; or training for the efficient and effective management and operation of DoD organizations, activities, or systems. They are normally closely related to the basic responsibilities and mission of the using organization. This category includes efforts that support or contribute to improved organization or program management, logistics, project monitoring and reporting; data collection, budgeting, accounting, auditing, and administrative and/or technical support for conferences and training programs. Although SAIC does not actively participate in the conduct of operational test and evaluation, services contracted are considered, based on the above definition, advisory and assistance and therefore, any FCS test and evaluation support performed under the above referenced ATEC task order can be conceived as an OCI violation.

I hereby determine that SAIC, as Systems Integrator for FCS, has a pecuniary interest in the system under test (FCS Spin-out 1, June 2008). The overall examination of the PBWS made it impossible to ascertain supported services specifically to operational test and evaluation of FCS. However, since the services are for all aspects of test, evaluation, and analysis, a

logical conclusion can be made that operational test and evaluation for FCS activities are included. Hence, based upon title 10 U.S.C. 2399 (d) & (e) (3), and AMSCA clause 0209-4010, I have determined that an organizational conflict of interest does exist.

We commend the contracting officer of the ATEC Mission Support Contracting Activity for taking prompt action to discontinue using SAIC to perform tasks related to FCS.

Army Evaluation Center

AEC funded work with SAIC for advisory and assistance services related to FCS under two contract actions. The collective FY 2007 value of the actions was \$5.1 million.

Specifically, through Task Orders 1 and 27 on multiple-award indefinite-delivery, indefinite-quantity contract W91CRB-06-D-0014 with SAIC, AEC assigned SAIC the following scopes of work:

Task Order 1

Task 1. General Modeling and Simulation Support

- SMART and 3CE Architecture and Verification, Validation and Accreditation Subgroup Participation
- Development of Verification and Validation Plans
- Progress Tracking of Modeling and Simulation
- Capability Development and Analysis of Modeling and Simulation Data
- Independent Verification and Validation of Modeling and Simulation

Task 2. Test and Evaluation Related Modeling and Simulation Architecture Requirements, Definition, and Verification, Validation and Accreditation for SMART Application

- System, and System of System Architecture Development
- Verification, Validation and Accreditation Planning
- Verification, Validation and Accreditation Documentation

Task Order 27

Task 1. General Modeling and Simulation Support

- SMART & 3CE Architecture Requirements Development
- Development of Verification and Validation Plans and Reports
- Progress Tracking of Modeling and Simulation
- Capability Development and Analysis of Modeling and Simulation Data
- Independent Verification and Validation of Modeling and Simulation

Task 2. Test and Evaluation Related Modeling and Simulation Architecture Requirements, Definition, and Verification, Validation and Accreditation for SMART Application

- System, and System of System Architecture Development
- Verification, Validation and Accreditation Planning
- Verification, Validation and Accreditation Documentation

....

Task 3 AEC Model and Simulation Maintenance and Enhancement

- Database Administration
- Model Search Capability

- System Engineering Plan Search Capability
- Documentation Search Capability
- Army Evaluation Center Model and Simulation Database Reports
- Army Evaluation Center Model and Simulation Database Access

Task 4. End-to-End Modeling and Analysis

- System Performance Analysis
- Conceptual Model
- Tool Modification
- Predictive Runs to Inform CASTFOREM Modeling
- Test Tool Validation

OCI Solicitation and Contract Provisions. The solicitation that the Research, Development, and Engineering Command issued to solicit proposals from private industry to satisfy the Army Evaluation Center’s requirements included the following clause to prohibit system developers from fulfilling the requirements.

13.1 Title 10, US Code, Section 2399, and DOD/Army policy prohibit persons employed by the contractor for the system being developed from participating in the operational test and evaluation of that system. The only exception is where it is planned for system contractor employees to be involved in the operation, maintenance, or other support of the system when deployed in combat. Consequently, all parties must be sensitive to actual or potential conflicts of interest where contractors could be or are involved in the operational testing of their own equipment or weapons systems. *Such involvement is strictly prohibited, and unlike other types of organizational conflicts of interest, cannot be overcome or cured by mitigation plans.*

The clause clearly states that DoD and Army policy prohibit persons employed by the contractor involved in developing a system from also participating in the operational test and evaluation of that system. The clause also notes that “such involvement is strictly prohibited and, unlike other types of [OCIs], cannot be overcome or cured by mitigation plans.” The solicitation also included the following passages requiring SAIC to immediately inform the Government if a scope of work requires it to supply technical support related to systems or projects with which it was already involved.

13.3.1.2 If performance of any SOW requires the contractor (to include subcontractors) to supply technical support related to systems or projects with which the contractor is already directly concerned, either by prime or subcontract, the contractor shall so immediately inform the Contracting Officer. The SOW may be withdrawn if a conflict is found. The Contractor shall not undertake performance of any SOW which requires it to supply technical support regarding such systems until the notice is given, and written consent to proceed is issued by the Contracting Officer.

OCI Disclosure and Government Evaluation. SAIC included the following passages addressing OCIs in an attachment to the proposal it submitted for its multiple-award indefinite-delivery, indefinite-quantity contract.

AEC must execute its mission to plan and conduct independent evaluations that provide essential information to decision makers for equipping and sustaining the warfighter. As the test and evaluation (T&E) contractor, the SAIC Team must support AEC in a manner that maintains AEC's independence, because each evaluation product has the potential to drive

program and budget decisions. SAIC has successfully prevented any perception of or actual organizational conflict of interest (OCI) under our current contract and will continue to protect AEC against OCI-related situations under the new contract.

SAIC is familiar with Title 10, U.S. Code, Section 2399, and relevant provisions of DoD/Army policy that prohibit personnel employed by the contractor developing the system from participating in the system's operational T&E. SAIC also is very sensitive to AEC's position as the "independent test and evaluator" and agrees to avoid even the appearance of any conflict of interest. SAIC supports the underlying OCI principles of preventing interference that might bias a contractor's judgment or objectivity that could lead to an unfair competitive advantage.

SAIC will abide by the contracting officer's (CO) decisions on issuing SOWs to contractors. SAIC will analyze elements of all delivery order tasks, initiate our corporate-wide OCI notification and alert system, and use our corporate contracts database to identify potential OCIs. Should a potential problem arise, SAIC will report it to the CO before starting the task and submit a proposed mitigation plan to the CO, whenever appropriate.

If a delivery order requires SAIC to supply technical support for systems or projects with which we are already working-either by prime or subcontract, or with another private firm or the government, including and particularly the relevant DoD program or project manager-we will immediately inform the CO, who may withdraw the delivery order if he or she deems necessary.

SAIC will notify the CO of any potential OCIs during the preparation of our proposal. If we fail to notify the CO, we acknowledge his or her right to withdraw that task's SOW.

SAIC has a comprehensive, internal OCI review / clearance process. Before bidding or accepting any task, a company-wide review of the proposed task is completed to prevent any OCI. If it is determined that SAIC has a potential OCI, we will prepare a description of the problem and a method to mitigate it. This analysis will be immediately presented to AEC for approval.

In addition, the response that SAIC submitted in response to the Request for Proposal issued to solicit proposals to fulfill the specific requirements of Delivery Orders 1 and 27 included the following statement:

In order to fulfill the OCI requirements set forth in Clause 13 "Conflicts of Interest" of the contract, SAIC routes the Government's new Statements of Work through our Corporate OCI Systems. SAIC has received no OCI (conflicting) responses to date. Should an OCI response occur, SAIC will immediately investigate the conflict, begin mitigation discussions, and alert the Government. All measures will be taken to resolve the issue to the satisfaction of all.

We were unable to determine if the contracting officer performed any evaluation beyond accepting statements made in SAIC's proposal to determine whether potential issues existed that would hinder SAIC's ability to provide unbiased advisory and assistance services related to the overall contract or the specific scope of work SAIC performed under Delivery Orders 1 and 27. There was no documentation in the contracting file to indicate how the issue was addressed. According to the contracting officer, while most contractors

claimed to be sensitive to actual and perceived OCIs, in practice, they rarely disclosed any conflicts. Therefore, the command also relied on its technical specialist's knowledge of a company's other relationships to help make its OCI determinations. However, as Table 3 shows, the command's technical specialists only excluded SAIC from 6 of the 16 FCS-related task orders that the command issued against its multiple-award contract. Table 3 also shows that SAIC was awarded contracts for both of the delivery orders for which it submitted proposals.

| Table 3. FCS-related task orders | |
|---|-----------|
| FCS-related orders | 16 |
| Prohibited from Competing | <u>6</u> |
| Total | 10 |
| Submitted Proposal | 2 |
| Received Award | 2 |

According to the contracting officer, their technical specialists have little training related to OCIs and no source of reliable information available to help them identify whether a contractor was or had supported a system's development activities. As a result, SAIC was awarded task orders to provide advisory and assistance services related to a system that SAIC may have a diminished capacity to give impartial, technically sound, and objective assistance and advice.

AEC needs to determine whether it is appropriate to obtain advisory and assistance services from SAIC or any other contractor that has significant involvement in the development of DoD systems that the command is or will be overseeing. If the Commander determines it is essential to use the same contractor, appropriate waiver procedures should be followed as required by FAR Subpart 9.5 for non-Title 10 U.S.C. 2399 support.

Northrop Grumman

During 2007, Northrop Grumman was under contract to help develop FCS as well as provide advisory and assistance services to the DTC and AEC.

FCS Development

Northrop Grumman supported Boeing in the development of the FCS Class IV Unmanned Aerial Vehicle. The vehicle provides brigade-level reconnaissance, surveillance, and target acquiring and target designation. Northrop Grumman also supported Boeing in the development of the Logistics Decision Support and the Network Management systems for FCS. Northrop Grumman received an estimated \$1.7 billion for its developmental work.

Providing Systems Engineering and Technical Direction

Developmental Test Command

DTC funded work with Northrop Grumman for advisory and assistance services related to FCS under two contract actions awarded to the New Mexico Technology Group (NewTec). NewTec was a joint venture between Northrop Grumman, Computer Sciences Corporation (CSC), Lockheed Martin, and TRAX International. The collective FY 2007 value of the contract actions was \$12.9 million. Under the terms of the joint venture agreement, Northrop Grumman was entitled to \$1.3 million of the funding that the DTC added to the contracts during FY 2007. Specifically, contract W9124Q-07-C-0504 required members of the joint venture to:

You shall provide all management, administrative, supervisory, and technical support for WSMR [White Sands Missile Range] Mission Support Services in support of WSMR ATEC/DTC and the High Speed Track (Holliman Air Force Base) in the areas of program management, mission support, maintenance, services, open work assignment orders (WAO's), completed WAOs and reports.

NewTec was assigned to perform the following FCS-related tasks under the following work assignment orders:

WAO A005 – M&S Integrated Remote Enabled Camera Management (FIRECAM)

3.3 NEWTEC [The New Mexico Technology Group] will demonstrate an initial prototype system for evaluation and a follow-on demonstration system with expanded capabilities including a multi-format point-to-point capability for FCS use.

WAO A008 – FCS Real-Time Information Fusion Learning Engine (RIFLE)

3.3 NEWTEC will demonstrate an initial prototype system for evaluation utilizing data formats deemed to be of high priority for initial FCS testing.

WAO A017 – FCS Graphic Support

3.1 NEWTC will provide assistance in testing the WSMR Test Support Network (TSN), GE Campus Ring Network, Local Network IRCC, and remote distribution network.

3.3 NEWTEC will support a variety of planning preparation, and test efforts for Experiment 1.1 and Spin Out 1 testing.

WAO A032 – Future Combat Systems Battlespace Real-Time Video

NEWTEC will develop a plan for the design and integration of an ICAT [Integrated Compact semi-Autonomous Tracking system] into the FCS and WSMR infrastructure. The preliminary plan will show how a small suite of ICAT instruments would be positioned in an FCS operational environment to collect imagery data of the FCS entities on the ground from an elevated position.

WAO A067 – FCS Range Support

The scope of this Work Assignment Order (WAO) will provide FCS support for [Experiment 1.1] Phase II and Phase III efforts as well as planning efforts for Spin out 1.

In addition, under contract DAAD07-00-C-0226, the joint venture furnished scientific, engineering, technical, administrative, operation, maintenance, and support services in support of the Electronic Proving Ground's test mission, to include the following:

3.6 Test Engineering. The contractor shall provide test engineering services, including test operations and test support.

3.6.1 Test Operations. The contractor shall provide test operations to include test planning and design, execution, and reporting.

3.6.1.1 Test Planning and Design. The contractor shall analyze technical and data requirements, explore different testing approaches to arrive at optimum test methods, prepare detailed test plans and test procedures, determine instrumentation requirements, and form test teams as required.

3.6.1.2 Test Execution. The contractor shall operate equipment and Systems Under Test in accordance with manufacturer's and other applicable instructions, and local requirements. In some instances, test vehicles, systems, and instrumentation may not have documentation available. The contractor shall perform laboratory and field tests at singular or multiple distributed locations including Fort Huachuca, and other locations and facilities worldwide, and within schedules specified. The contractor may be required to participate in or witness the conduct of another contractor's test and evaluate the data acquired during testing. All data collected shall be documented during testing in accordance with the data collection plan. All test data acquired during the course of testing shall be reviewed and interpreted considering factors such as consistency, completeness, applicability, accuracy, and usability.

3.6.1.3 Test Reporting. The contractor shall prepare test documentation and review, interpret and report on the test data acquired.

3.6.2 Test Support. The contractor shall support testing by providing, operating and maintaining instrumentation, data reduction, and analysis systems, communications networks, video systems, land surveys, equipment operators, and data collectors.

3.6.2.1 Instrumentation. The contractor shall use and maintain test instrumentation, automated test tool software, and special purpose computer equipment in support of EPG testing requirements. These tools include embedded computer system stimulator/drivers, hardware emulators, software, protocol interfaces, firmware, test instrumentation and other devices.

3.6.2.2 Data Collection, Reduction and Analysis (DCRA). The contractor shall identify and determine DCRA techniques and processes necessary to satisfy the requirements outlined in the detailed test plan. The contractor shall determine techniques, processes, and operational procedures to integrate and automate the DCRA of test data. As required, the contractor shall plan and conduct rehearsals and dry runs, in conjunction with the range and test officers, to verify DCRA plans and procedures. Further, the contractor shall perform manual or automated data collection, reduction, and analysis, to include editing and assessment of test data as outlined in the detailed test plan.

3.7 Research and Development.

3.7.1 Instrumentation Development. The contractor shall conduct research and development to support testing with innovative, technically advanced, efficient and cost effective methods, models and simulations, and instrumentation.

3.7.2 Modeling and Simulation. The contractor shall develop, adapt and use models to simulate and evaluate system performance in realistic operational environments.

3.7.3 Database Development. The contractor shall develop, populate, maintain, and update databases containing technical, equipment, parametric or deployment information to support a variety of test and evaluation activities such as field testing, hardware-in-the-loop testing, controlled environment or laboratory testing, in addition to traditional simulation and modeling efforts.

3.7.4 System Development. The contractor shall provide support in the area of research, design, development and modification of systems, including hardware, software, and system integration.

OCI Solicitation and Contract Provisions. The OCI clauses included in contracts W9124Q-07-0504 and DAAD07-00-C-0226 did not adequately outline the prohibition that 10 U.S.C. 2399 placed on system developers participating in the testing and evaluations their systems and relied solely on prospective offerors to self-identify potential conflicts. Specifically, the OCI provisions only required:

Contract W9124Q-07-0504

(a) The offeror or Contractor warrants, that to the best of the Contractor's knowledge and belief, that there are no relevant facts or circumstances which could give rise to an OCI, as defined in FAR 9.505-1 through 9.505-4 or other applicable law or regulation.

Contract DAAD07-00-C-0226

a. To prevent conflicting roles which may bias the contractor's judgment or objectively, or to preclude the Contractor from obtaining an unfair competitive advantage in concurrent or future acquisitions, the Contractor will be restricted as set forth in paragraph c below.

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c. The following rules apply:

1. The Contractor agrees that if it has participated in (or is participating in) the development, production or testing of a system for a military department or Defense Agency (or another contractor of the Department of Defense), it is prohibited from involvement in any way, from the time of subtask award to two years after subtask completion, in providing services with regard to the operational test and evaluation of the system and in the establishment of criteria for data collection, performance assessment or evaluation activities for the operations test and evaluation of that system. This limitation does not apply to a contractor that has participated in such development, production or testing solely as a representative of the Federal Government (note the word "representative" is directly from Section 819 of the Defense Authorization Bill dated 5 October 1992).

2. The Contractor will participate in the technical evaluation of other Contractors' proposals or products. To ensure objectively, the Contractor is precluded from award of any supply or service contract or subcontract for its major components. This restriction shall be effective for two years after subtask completion. This does not apply to other technical evaluation concerning the system.

Disclosure and Government Evaluation. NewTec, the successful offeror, did not disclose that it possessed any OCIs when it concluded that although Northrop Grumman, CSC, and Lockheed Martin received part of the joint venture's profit and had

representation on NewTec's Board of Directors, no OCI existed because it considered its parent companies' involvement passive in nature. According to a representative from the joint venture, the parent companies were not involved in NewTec's day-to-day decisionmaking and in the event that NewTec needed to obtain subject matter expertise from one of its parent companies, the employees providing the expertise were required to terminate their employment with the parent company and become joint venture employees. As a result, the Army contracting activity did not detect that it had hired a number of the major FCS subsystem developers to operate one of the test centers scheduled to be used for operational test and evaluate of the FCS.

The recommendation made to DTC in this report addresses this issue.

Operational Test and Evaluation Activities

Army Evaluation Center

AEC funded work with Northrop Grumman for advisory and assistance services related to FCS under two contract actions. The collective FY 2007 value of the actions was \$3.3 million. Specifically, under Delivery Orders 5 and 23, awarded against multiple-award indefinite-delivery, indefinite-quantity contract W91CRB-06-D-0013, Northrop Grumman was tasked to perform the following:

4.1 Task 1. Evaluation Event Planning. The contractor shall participate in the input to the development, editing, and review of the UGS ISR [Intelligence, Surveillance, and Reconnaissance] FCS Platform level System Evaluation Plan (SEP) or UGS ISR FCS C4ISR Operational Capability level SEP. Particular emphasis shall be focused to the evaluation strategy, analysis methodology and the data management process (i.e. Baseline Correlation Matrix, Data Source Matrix, and Evaluation Dendritic). The contractor shall participate in ABC evaluation strategy (i.e., ESR, CIPR, Rock Drill) to collect data, which will refine the government's developed Measures of Effectiveness (MOEs) and Measures of Performance (MOPs) to answer the COICs or its mission need. Once the measures are completely developed, the contractor shall participate in the formalizing an UGS ISR system' evaluation strategy. Contractor input to the evaluation strategy will be used to map the evaluation measures to DT/OT or various operational events (i.e., Spin Outs, ...).

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4.2.2 The contractor shall review the developmental test and conduct analysis of the data and reports to support the technical assessment of the system's readiness and maturity for Spin Outs (SO) during FCS System Development and Demonstration (SDD) phase. The contractor shall address the technical measures of effectiveness and performance outlined in both UGS ISR and UGS ISR for FCS UA Family of System (FoS) and System of System (SoS) SEP.

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4.3.1 The contractor shall develop the UGS ISR database to satisfy the data reduction, management, and analysis of the UGS ISR's technical and operational test data. The contractor shall become knowledgeable of the UGS ISR proponents' data collection formats (instrumentation and data collection forms) to enable the transfer of technical data to the UGS ISR database. The database system will include effective quality control methods and procedures. The contractor shall manage and perform data entry of the UGS ISR data. As determined by COR, a data authentication process will be used to ensure data are correct before release of data to outside agencies.

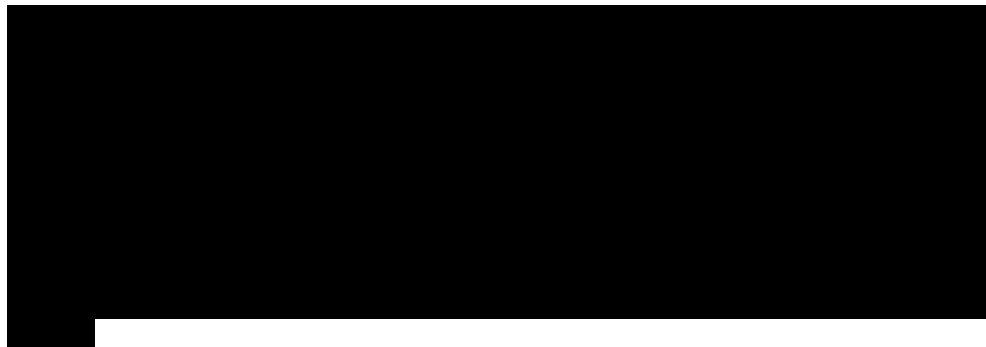
OCI Solicitation and Contract Provisions. The solicitation that the Research, Development, and Engineering Command issued to solicit proposals from private industry to satisfy the AEC's requirements included the following clause to prohibit system developers from fulfilling the command's requirements.

13.1 Title 10, US Code, Section 2399, and DOD/Army policy prohibit persons employed by the contractor for the system being developed from participating in the operational test and evaluation of that system. The only exception is where it is planned for system contractor employees to be involved in the operation, maintenance, or other support of the system when deployed in combat. Consequently, all parties must be sensitive to actual or potential conflicts of interest where contractors could be or are involved in the operational testing of their own equipment or weapons systems. *Such involvement is strictly prohibited, and unlike other types of organizational conflicts of interest, cannot be overcome or cured by mitigation plans.* [Emphasis Added]

The clause clearly states that DoD and Army policy prohibit persons employed by the contractor involved in developing a system from also participating in the operational test and evaluation of that system. The clause also notes that "such involvement is strictly prohibited and, unlike other types of [OCIs], cannot be overcome or cured by mitigation plans." The solicitation also included the following passages requiring Northrop Grumman to immediately inform the Government if a scope of work that it was asked to perform requires it to supply technical support related to systems or projects with which it was already involved.

13.3.1.2 If performance of any SOW requires the contractor (to include subcontractors) to supply technical support related to systems or projects with which the contractor is already directly concerned, either by prime or subcontract, the contractor shall so immediately inform the Contracting Officer. The SOW may be withdrawn if a conflict is found. The Contractor shall not undertake performance of any SOW which requires it to supply technical support regarding such systems until the notice is given, and written consent to proceed is issued by the Contracting Officer.

OCI Disclosure and Government Evaluation. Northrop Grumman included the following passages in an attachment to the proposal it submitted for its multiple-award indefinite-delivery, indefinite-quantity contract to address its procedures for addressing OCIs.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Northrop Grumman did not disclose that it possessed any OCIs that would impact its impartiality with respect to the specific requirements of Delivery Orders 5 and 23. In fact, for Delivery Order 23, Northrop Grumman's Contracts Manager certified that Northrop Grumman Space and Mission System Corporation's Command and Control Systems Division had conducted a review of the company's operations. The Contracts Manager determined that it had not participated, and was not participating, either by prime or subcontract, in the development, production, or testing of the Unattended Ground Sensor Intelligence, Surveillance, and Reconnaissance for a DoD program or project manager, military department, Defense agency, or another contractor of the Department of Defense.

We were unable to determine how the contracting officer concluded that the business isolation procedures that Northrop Grumman described in the proposal it submitted for the

overall contract was consistent with the OCI provisions of 10 U.S.C. 2399 or the OCI clause contained in their overall contract. However, based on documentation contained in the contract files, it appears the contracting officer concluded that Northrop Grumman possessed no OCIs related to the requirements of either delivery order. The Management Decision Document for Delivery Order 5 states that “The contractors (to include parent and subsidiaries) do not provide service support related to the system developers” and “No potential conflicts have been identified.” In addition, according to an AEC representative, the contracting activity performed a legal review prior to awarding Delivery Order 23 that determined Northrop Grumman had no OCI relating to the continuous evaluation effort for the Unattended Ground Sensor system. The representative further stated that the determination was based on the fact that Northrop Grumman was a developer for the Class IV Unmanned Aerial Vehicle, the Decision Support System, and the Network Management System, all of which were completely separate from the FCS Spin-Out 1 Unattended Ground Sensor system, and Northrop Grumman played no role in the development of that system.

We believe the tasks that Northrop Grumman was assigned to perform under these delivery orders contradicts the restrictions outlined in 10 U.S.C. 2399. A contractor that has participated in (or is participating in) the development, production, or testing of a system for a military department or Defense Agency (or for another contractor of the Department of Defense) may not be involved (in any way) in the establishment of criteria for data collection, performance assessment, or evaluation activities for the operational test and evaluation of that system. Northrop Grumman is involved in the development of FCS. The Unattended Ground Sensor system is one of FCS subsystems; and therefore, Northrop Grumman has a relationship that may impact its ability to perform the work covered by the delivery orders.

The recommendation made to AEC in this report addresses this issue.

Computer Sciences Corporation

During 2007, CSC was under contract to help develop FCS, as well as provide systems advisory and assistance services to the DTC and OTC.

FCS Development

CSC helped develop the Training Support Package for the FCS and is supporting General Dynamics manned ground vehicle development efforts. CSC received an estimated \$54 million for its developmental efforts.

Providing Systems Engineering and Technical Direction

Developmental Test Command

CSC also provided systems engineering and technical direction to three developmental test facilities through NewTec’s joint venture with Northrop Grumman, Lockheed Martin, and TRAX International. As stated previously, the joint venture supported, operated, and maintained test operations at the White Sands Missile Range, the High Speed Test Track, and the Electronic Proving Ground under contracts W9124Q-07-C-0504 and

DAAD07-00-C-0226. Under the terms of its joint venture agreement, CSC is entitled to \$7.6 million of the funding that DTC added to the contracts during FY 2007.

OCI Solicitation and Contract Provisions and OCI Disclosure and Government

Evaluation. As stated previously, the OCI provisions included in the contract did not adequately outline the prohibition that 10 U.S.C. 2399 places on system developers participating in the testing and evaluation of their systems and relied solely on prospective offerors to self-identify their potential conflicts. Consequently, NewTec did not disclose that it possessed any OCIs because it erroneously concluded that although Northrop Grumman, CSC, and Lockheed Martin received part of the joint venture's profit and had representation on NewTec's Board of Directors, no OCI existed because it considered its parent companies' involvement passive in nature. As a result, the Army contracting activity did not detect that it had hired a joint venture of a number of the major FCS subsystem developers to operate one of the test centers being used to operational test and evaluate the FCS.

The recommendation previously made to DTC in this report addresses this issue.

Operational Test Command

OTC funded work with CSC for advisory and assistance services related to FCS under one contract action awarded to the Test and Experimentation Services Company. The Test and Experimentation Services Company was an unpopulated joint venture that CSC entered into with the Electronics Warfare Associates Services, Incorporated. Unlike regular joint ventures, under this arrangement, the members of the joint venture retained their own corporate identity and only share in the profits and losses associated with the work that their employees actually perform. The FY 2007 value of the contract action was \$42.0 million. Specifically, under contract DATM01-02-C-0004,⁹ the Test and Experimentation Services Company provided the following support to the command's operational test, investigation, and experimentation mission related to FCS's Spin-Out 1 Limited User Test. The contract stated:

WAO 7700 – Future Combat System Future Combat Systems (FCS) Spin Out 1 (SO1)
Limited User Test (LUT)

The purpose of SO1 LUT is to test and evaluate the FCS systems and small representative Family of Systems (FoS) elements (sections/squads/platoons) capabilities to perform required tasks and missions in an operationally realistic live and virtual environment. The demonstration of IPD Exit Criteria will also be included as part of SO1 LUT.

The SO 1 LUT will be structured to provide the needed information to support evaluation of the SO 1 capabilities provided the HBCT and to determine the potential for individual systems to achieve FCS core program requirements. The SO 1 LUT will use live elements of the Evaluation Brigade Combat Team (EBCT) to conduct company and platoon offensive and defensive operational missions. The missions will be conducted in complex terrain environments which include integrated urban areas.

⁹ Contract number DATM01-02-C-0004 was renumbered as contract W91154-07-C-0001.

OCI Solicitation and Contract Provisions. To obtain unbiased operational test, investigation, and experimentation support, the Army Test and Evaluation Command Mission Support Contracting Activity included the following OCI clause in the solicitation it issued.

Title 10 USC 2399 prohibits the involvement of defense contractors in the operational test and evaluation of weapons systems and equipment. Consequently, all parties must be particularly sensitive to potential, actual, or perceived organizational conflicts of interest where contractors are or appear to be involved in the operational testing of their own equipment or weapons systems. Such involvement is strictly prohibited. The Contractor acknowledges that it is familiar with Title 10 USC 2399 and FAR 9.5 and agrees that it will avoid conflicts of interest and, to the maximum possible extent, the appearance of conflicts of interest, in accordance with the principles set forth in the Statute and FAR.

The clause clearly states that 10 U.S.C. 2399 prohibits the involvement of Defense contractors in the operational test and evaluation of their own weapons systems. The clause also contained the following passage that required the Test and Experimentation Services Corporation to inform the contracting officer if it was required to supply technical support related to a system they were already directly involved.

If performance of any Work Authorization Order requires the contractor to supply technical support related to systems or projects with which the contractor is already directly concerned, either by prime or subcontract, with either another firm or the Government, including, and particularly, the cognizant Department of Defense Program or Project Manager, the contractor shall so immediately inform the Contracting Officer. The Work Authorization Order may be withdrawn in writing at the discretion of the Contracting Officer without recourse by the contractor.

OCI Disclosure and Government Evaluation. In their proposal, the Test and Experimentation Services Company informed the contracting officer that it possessed OCIs with respect to the work to be performed under the work authorization orders. However, the company proposed that CSC's partner perform all the work under the contract. Thus, the Director of Contracts stated that based on that fact, the command concluded that awarding the scope of work to the Test and Experimentation Services Company did not violate Title 10's OCI restrictions because CSC would not share in any of the profit derived from the contract.

We believe this arrangement violates the intent of 10 U.S.C. 2399 because it presents the opportunity for CSC to control the company's staffing structure to work on tasks where they could potentially influence the operational test and evaluation of technology that it helped develop by transferring their employees to Electronic Warfare Associates Services, Incorporated. According to the Director of Contracts, should the Test and Experimentation Services Company need the expertise of one of CSC's employees, they would merely terminate their employment with CSC and become an employee Electronic Warfare Associates Services, Incorporated to perform the work.

OTC should determine whether it is appropriate to obtain advisory and assistance services from CSC or any other contractor that has significant involvement in the development of

DoD systems that the command is or will be overseeing. If the Commander determines it is essential to use the same contractor, appropriate waiver procedures should be followed as required by FAR Subpart 9.5 for non-10 U.S.C 2399 support.

General Dynamics

During 2007, General Dynamics was under contract to help develop FCS, as well as advisory and assistance services to the OTC.

FCS Development

General Dynamics developed the manned ground vehicles for the FCS. Specifically, General Dynamics developed the Command and Control Vehicle, the Reconnaissance and Surveillance Vehicle, and the Mounted Combat System, which provide capabilities, such as battle command, control, and communications for the tactical commander; discrimination of multiple target sets; and offensive maneuver capabilities to close with and destroy enemy forces. In addition, General Dynamics also provided the Autonomous Navigation System, Sensor Data Management, and Integrated Computer System for the FCS. During FY 2007, General Dynamics received about \$3.9 billion for its developmental efforts.

Operational Test and Evaluation Activities

Operational Test Command

OTC funded work with General Dynamics for advisory and assistance services related to FCS under one contract action. The FY 2007 value of the action was \$7.0 million. Specifically, after acquiring FC Business Systems, General Dynamics provided the Air Defense Artillery Test Directorate with planning, coordination, data collection (automated and manual), data reduction, management, and report generation support under General Services Administration's "Millennia Lite" contract GS07T00BGD024 task order MW215ADA01T5, including assisting in evaluating the effectiveness and suitability of the FCS. The task order's statement of work states:

The contractor will furnish required services to provide systems hardware and software development and maintenance for business and scientific/engineering applications. Additionally, the contractor will support task efforts in the areas of planning, coordinating, data collection (automated/manual), data reduction, management, and report generation for the FCS system. The following areas, as a minimum, are required for support:

- System performance analysis for planning, data collection, reduction, analysis, and reporting
- Instrumentation research and development
- Manpower and Personnel Integration (MANPRINT) planning, data collection, reduction, analysis, and reporting
- Reliability and Maintainability (RM) planning, data collection, reduction, analysis, and reporting
- Analog and digital communications
- Clerical support
- Data collection to include training
- Data reduction
- Data entry

- Electronic technician support for installation, maintenance, and operation of required instrumentation
- Computer operations/data management
- Data Management
- Local Area Network (LAN) Operations
- Computer Operations and H/S Accountability Operations

OCI Solicitation and Contract Provisions. The following clause was included in the General Services Administration “Millennia Lite” conformed contract GS07T00BGD024 to inform prospective contractors of the potential for OCIs.

Under this contract, the Contractor may be tasked to help prepare for and/or conduct an IT acquisition. In such cases, the Contractor may be required to sign an organizational conflict of interest statement in which the Contractor (and any subcontractors or teaming partners) agree not to submit a proposal , or provide support to a proposing firm (either prime or subcontractor) which is submitting a proposal, under any solicitation resulting from the work performed in the Millennia Lite task. The Government will strive to identify this type of situation in the Task Order Request. All potential conflict of interest situations shall be handled in accordance with FAR 9.5.

In addition, to obtain unbiased support, the General Services Administration included the following clause in task order MW215ADA01T5.

To avoid any real or perceived conflict of interest between manufacture of items being tested and contractor performing tests, please review 10 USC 2399 and respond. Information you provide will be reviewed and may be researched. Government will decide whether a conflict of interest is present and will act appropriately.

The OCI provisions prohibited FC Business Systems from satisfying requirements resulting from its work under the contract, and the task order issued to support the OTC Air Defense Artillery Test Directorate’s mission requirements included additional restrictions to prevent FC Business Systems from operationally testing equipment it helped manufacture. However, the provisions did not require FC Business Systems to inform the Government of its acquisition by General Dynamics. As a result, the OTC and General Services Administration did not detect that General Dynamics, one of Boeing’s major FCS development subcontractors (after acquiring the FC Business Systems) was helping the command plan, coordinate, collect, and reduce data used to evaluate the effectiveness and suitability of the FCS, a clear violation of the OCI provisions in 10 U.S.C. 2399.

The recommendation made to OTC in this report addresses this issue.

Lockheed Martin

During 2007, Lockheed Martin was under contract to help develop FCS, as well as provide systems engineering and technical direction to DTC.

FCS Development

Lockheed Martin provided the FCS with the Centralized Controller, Armed Robotic Vehicle, Multifunctional Utility/Logistics and Equipment vehicles, Non-Line-of-Sight

Launch System, and the Training Instrumentation Architecture. During FY 2007, Lockheed Martin received an estimated \$648 million for its developmental efforts.

Providing Systems Engineering and Technical Direction

Developmental Test Command

Lockheed Martin also provided systems engineering and technical direction to three developmental test facilities through NewTec's joint venture with Northrop Grumman, CSC, and TRAX International. As stated previously, the joint venture supported, operated, and maintained test operations at the White Sands Missile Range, the High Speed Test Track, and the Electronic Proving Ground under contracts W9124Q-07-C-0504 and DAAD07-00-C-0226. Under the terms of its joint venture agreement, Lockheed Martin is entitled to \$4.0 million of the funding that DTC added to the contracts during FY 2007.

OCI Solicitation and Contract Provisions and OCI Disclosure and Government Evaluation. The OCI provisions included in the contract did not adequately outline the prohibition that 10 U.S.C. 2399 places on system developers participating in the testing and evaluation of their systems and relied on prospective offerors to identify their potential conflicts. Consequently, NewTec did not disclose that it possessed any OCIs because it erroneously concluded that although Northrop Grumman, Computer Science Corporation, and Lockheed Martin received part of the joint venture's profit and had representation on NewTec's Board of Directors, no OCI existed because it considered its parent companies' involvement passive in nature. As a result, the Army contracting activity did not detect that it had hired a joint venture of a number of the major FCS subsystem developers to operate one the test centers being used to operational test and evaluate the FCS.

The recommendation made to DTC in this report addresses this issue.

Implementation of Prior Audit Corrective Measures

The policies, procedures, and internal control changes that we recommended in DoD IG Report Number 91-115, "Consulting Services Contracts for Operational Test and Evaluation," August 22, 1991, related to the extensive use of service contractors and OCIs were never fully implemented.

Extensive Use of Service Contractors

In our 1991 report, we reported that DOT&E and the test agencies, lacking sufficient in-house civilian staff to perform their mission, depended on services contractors for program continuity and the corporate knowledge needed to plan, analyze, and report operational tests. We also reported that they frequently used the same contractors to support the operational tests for major Defense acquisition systems that also participated in the development of the systems. At that time, we recommended that the advisory and assistance services performed at the various test agencies be brought in-house; however, DOT&E and the test agencies disagreed that such action was necessary because they stated that they believed their reliance on services contractors for fulfilling their mission

requirements was temporary and intermittent; however, as Figure 2 shows, that reliance seems more long-term in nature.

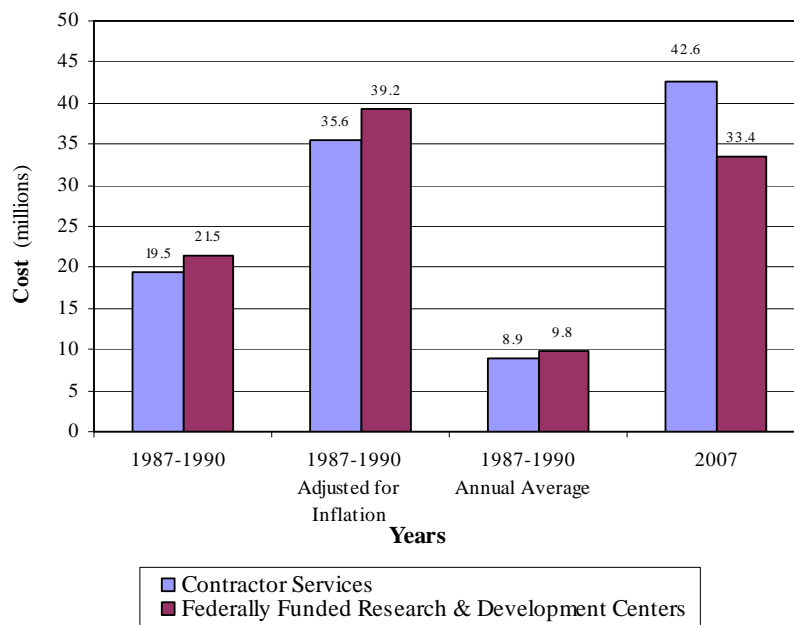


Figure 2. DOT&E Support Services Contracting Costs

Adjusted for inflation,¹⁰ the amount and the percent of dollars spent on contracted advisory and assistance services by DOT&E has increased since our previous audit. From FY 1987 through FY 1990, DOT&E spent an average of about \$8.9 million (annual average adjusted for inflation) on advisory and assistance services (contractor services) and about \$9.8 million for support from federally funded research and development centers. By FY 2007, DOT&E was spending about \$42.6 million for contractor services, which is an increase of more than 375 percent. In addition, the percent that DOT&E was spending on contractor advisory services now exceeded the amount spent for support from federally funded research and development centers. DOT&E advised the majority of the increased funding for contracted advisory and assistance services noted in this section of the report, occurred because DOT&E was assigned additional responsibilities by Congress and the Administration during the period spanning 1990-2009 not associated with its 10 U.S.C. 2399 roles and responsibilities, and these additional responsibilities accounted for the majority of the increased service contract expense.

In an April 06, 2009, briefing Secretary of Defense Robert M. Gates stated:

... we must reform how and what we buy, meaning a fundamental overhaul of our approach to procurement, acquisition, and contracting.

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¹⁰ We adjusted the dollars DOT&E spent on contracted advisory and assistance services for inflation using the U.S. Bureau of Labor Statistics Consumer Price Index Inflation Calculator to calculate 1987 dollars buying power in 2007.

This budget will support these goals by increasing the size of defense acquisition workforce, converting 11,000 contractors and hiring an additional 9,000 government acquisition professionals by 2015 – beginning with 4,100 in FY10. Fully reforming defense acquisition also requires recognizing the challenges of today’s battlefield and constantly changing adversary. This requires an acquisition system that can perform with greater urgency and agility. We need greater funding flexibility and the ability to streamline our requirements and acquisition execution procedures. The perennial procurement and contracting cycle – going back many decades – of adding layer upon layer of cost and complexity onto fewer and fewer platforms that take longer and longer to build must come to an end. There is broad agreement on the need for acquisition and contracting reform in the Department of Defense. There have been enough studies. Enough hand-wringing. Enough rhetoric. Now is the time for action.

In addition, provisions contained in recent legislation provide an excellent opportunity for DOT&E, the FCS Program Office, and the Army test agencies to bring work in-house and rebuild the agency expertise needed to perform its oversight mission as we go forward. Specifically, Section 2463, Title 10, U.S.C. directs the Department to give special consideration to using DoD civilian employees to perform certain categories of functions and to use the inventory of contractors to identify those functions. The guidelines and procedures state that DoD Components can use DoD civilian employees to perform new functions or functions that are performed by a contractor if an economic analysis shows that DoD civilian employees are the low-cost provider, or the DoD Component has determined, consistent with DoD Instruction 1100.22, “Guidance for Determining Workforce Mix,” that the function under review is inherently governmental or exempt from private sector performance. In addition, certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. We believe much of the work performed under the DOT&E services contracts could be closely associated with the performance of inherently governmental functions and eligible to be performed by DoD civilians.

The management and control of such programs must be firmly in the hands of full-time Government officials clearly responsible to the President and the Congress. (1962 Report to President Kennedy on Government contracting for Research and Development)

DOT&E, the FCS Program Office, and the various U.S. Army test commands should determine whether their advisory and assistance services requirements would be more appropriately met by in-house Government employees.

OCIs

In response to DoD Inspector General Report No. 91-115, DOT&E agreed to amend DoD Instruction 5000.2, “Operation of the Defense Acquisition System,”¹¹ to require each program manager to maintain a list of advisory assistance service contractors used during

¹¹ Formerly titled, “Defense Acquisition Management Policies and Procedures.”

development, production, or testing that contracting officers could use to ensure that those contractors were barred from operational testing to preclude any OCI, whether real or apparent. DOT&E also agreed to develop a standard OCI clause that precluded advisory assistance contractors from participating in the development, production, or testing and in the operational test and evaluation of the same systems. However, it appears DoD never fully implemented the corrective measures.

Our audit followup case file for the report indicates that on October 21, 1991, the Deputy Director of Operational Test and Evaluation (Resources and Administration) proposed to the Director for Acquisition Policy and Program Integration that DoD Instruction 5000.2 be amended to require each program manager to maintain a list of advisory assistance service contractors used during development, production, or testing. The file also indicates that the Deputy Director submitted a draft OCI clause to the Director of Defense Procurement for review, modification, and incorporation into the Defense Federal Acquisition Regulations. However, based on information gathered during our discussions with representatives from the FCS Program Office, DOT&E, and the various U.S. Army test and evaluation agencies and our review of the current DoD Instruction 5000.2 and the OCI provisions of the Defense Federal Acquisition Regulations; none of the corrective measures were ever fully implemented.

The Director, Defense Procurement and Acquisition Policy should develop a standard advisory and assistance services OCI clause, which precludes contractors that are involved in the development, production, or testing of a system for a military department from providing technical advice to the program office for that system or from participating in activities impacting the operational test and evaluation of that system unless appropriate waivers are obtained. The clause should make it incumbent on the proposing contractor to identify in their proposal any work that they are or have performed either under prime contract or subcontract related to the development or supply of a DoD system. The clause should also require the contractor to disclose any changes that could create potential conflicts during the life of the contract, and potentially require a recertification of disclosure of any changes upon execution the annual option to extend the contract. The Director also needs to emphasize to the acquisition community the importance of complying with FAR Subpart 9.5 and the significance of not placing contractors in positions to make decisions that favor their own capabilities and that any decisions to waive the requirements must be adequately supported and documented in the contract files.

Conclusion

FAR Subpart 9.5 directs contracting agencies to take measures to detect and mitigate actual and potential OCIs. Contracting officers must exercise common sense, good judgment, and sound discretion when analyzing whether a significant potential conflict exists and, if it does, take appropriate steps to resolve it. However, in practice, as highlighted in the report, contracting officers and agencies have encountered difficulties implementing appropriate OCI avoidance and mitigation measures. The solicitation provisions and contract clauses that DOT&E, the Army FCS Program Office, and the Army test agencies used to prevent FCS development contractors from providing technical direction or supporting the operational test and evaluation of the system did not prevent the same contractors from

supporting development. We also didn't identify any waivers to support and document decisions to use the same contractors when a conflict of interest was apparent.

Director of Operational Test and Evaluation Management Comments on the Finding and Our Response

The Director provided comments on the recommendations and on the draft report in an attachment. We have addressed the significant issues identified in the attachment in this section and made other minor changes to the report where appropriate.

Comments on ETAS Support. The Director disagreed that the contractual relationships between DOT&E and SAIC resulted in an actual organizational conflict of interest and that the ETAS contract does not violate 10 U.S.C. 2399. The Director stated that none of the tasks listed in the report involve SAIC personnel in the development of test requirements, test planning, or evaluation of test data for individual acquisition programs. The Director also stated that he did not believe that any of the tasks that involve SAIC personnel providing services related to the test and evaluation of a single system. ETAS deliverables constitute analytical support only and are not recommendations to the Government concerning the development of policy affecting operational test and evaluation. For these reasons, the Director disagreed that some of the support provided by SAIC under the ETAS contract may indirectly crossover into its 10 U.S.C. 2399 responsibilities. Further, the Director stated that DOT&E uses the Institute for Defense Analyses and MITRE, both Federally Funded Research and Development Centers, to support its 10 U.S.C. 2399 responsibilities.

Our Response. The report did not state that the contractual relationship between DOT&E and SAIC created an actual organizational conflict of interest as defined by 10 U.S.C. 2399. However, the report did question the judgment of DOT&E using SAIC, a system developer of the FCS, in direct contradiction of the ETAS solicitation and contract provisions that explicitly stated "offerors and providers are excluded from this contract who have significant involvement in the development of DoD systems that are under, or will be under DOT&E oversight." In addition, DOT&E did not address its FAR Subpart 9.5 responsibilities to determine whether it's appropriate to obtain ETAS from development or production contractors and if necessary, obtain appropriate waivers.

Comments that the Allegations Were Not Substantiated. The Director did not agree that the hotline allegations were substantiated because DOT&E relies on FFRDCs for all 10 U.S.C 2399 responsibilities related to oversight of operational or live fire testing of weapons systems. The Director stated that there was no evidence that DOT&E misrepresented the role of the LSI. The Director also did not agree that SAIC is its "primary contractor" because it creates the impression that SAIC provides core support for DOT&E 10 U.S.C. 2399 responsibilities.

Our Response. The allegations were substantiated as described in Appendix B. The solicitation and contract provisions explicitly excluded offerors and providers from the contract who had significant involvement in the development of DoD systems that are under, or will be under, DOT&E oversight. SAIC had significant involvement in the development of the FCS, [REDACTED] and should have been excluded from the contract. To avoid any confusion between the term “primary contractor” and FFRDC, we changed the term “primary contractor” to “primary commercial contractor” throughout the report.

Comments on Internal Controls and the Use of Good Judgment and Common Sense. The Director disagreed that DOT&E and the Army did not exercise the good judgment and sound discretion needed to prevent the existence of conflicting roles that might bias a contractor’s judgment or provide it an unfair competitive advantage as required by 10 U.S.C. 2399, “Operational Test and Evaluation of Defense Programs,” and FAR Subpart 9.505-1, “Providing Systems Engineering and Technical Direction.” The Director stated that the contractual scope of work, DOT&E’s internal structure, and the actual duties performed by SAIC personnel are such that no conflicting roles existed. He further stated that the report does not demonstrate a conflicting role concerning SAIC contracts or evidence of biased contractor judgment or competitive advantage for the contractor.

Our Response. We disagree. DOT&E had no procedures to prevent it from awarding a contract for advisory services to a contractor that had significant involvement in the development of DoD systems that are under, or will be under, the Director’s oversight. In addition, there was no documentation to support whether potential OCIs were ever evaluated and appropriately resolved.

Comments on Discontinuing ETAS Support for Live Fire Test and Evaluation. The Director commented that DOT&E discontinued senior technical support for the ETAS contract for Live Fire Test and Evaluation in 2007.

Our Response. We agree that the task should not have been awarded to SAIC.

Comments on Government OCI Evaluation for ETAS Contract. The Director did not agree with the conclusion that there was no evaluation of the SAIC involvement in the development of DoD systems before the award of the ETAS contract. The Director asserts that the exchange of information between the contracting officer and SAIC establishes that the contracting officer and DOT&E were aware of SAIC’s role concerning the FCS and did not consider that its role was an OCI. He also asserted that the FAR Subpart 9.504 states that the contracting officer should . . . “award the contract to the apparent successful bidder unless [an OCI] is determined to exist and cannot be avoided or mitigated.” He further stated that in this case, none of the contract tasks involve SAIC personnel in the development of test requirements or evaluation of test data for individual acquisition programs (the two test-related aspects of the FAR Subpart 9.5 definition of systems engineering that could potentially create an OCI for SAIC). Therefore,

it is reasonable that the contracting officer and DOT&E determined that there was no OCI.

Our Response. We found no evidence to support that an OCI evaluation of prospective offerors was conducted prior to the April 26, 2004, contract award but we did find evidence to the contrary. Only after receiving an industry inquiry regarding the award of the ETAS contract did the contracting officer inquire how the Government concluded that SAIC had no OCIs that would preclude it from consideration. Specifically, on May 24, 2004, after receiving the industry inquiry, the contracting officer wrote the DOT&E Contracts Manager requesting an answer to the following question.

On what basis did the Government conclude that the awardee's (SAIC) participation in the development of the Future Combat System did not violate the OCI clause in the solicitation?

On June 1, 2004, the DOT&E Contracts Manager wrote the following reply.

The government determined that SAIC did not have "significant involvement in development of DOD systems". SAIC's role in Future Combat Systems (FCS) is as a lead systems integrator (LSI). This is a systems integration contract, not a development contract.

The DOT&E Contracts Manager copied the previous two sentences in his response to the contracting officer for the ETAS contract directly from SAIC's proposal. In addition, the DOT&E's Contracts Manager stated:

DOT&E concluded that SAIC's participation in FCS did not violate the OCI clause in the solicitation and therefore did not preclude them from competing for the ETAS contract.

Further, in responding to our question, "Who made the 'no OCI determination?' in awarding SAIC the ETAS contract," the DOT&E Contracts Manager stated in a written response dated August 7, 2007,

There was no "no OCI determination" as such at the time of the SAIC ETAS contract award.

The DOT&E Contracts Manager's June 1, 2004 response to the ETAS contracting officer that SAIC was not involved in the development of the FCS also came after the award of the contract. In addition, the August 7, 2007, response contradicts the statement that there was an OCI determination made prior to the contract award. In a November 6, 2007 e-mail, the DOT&E Contracts Manager confirmed that he got the words for the June 1, 2004, response to the contracting officer from the former Director.

The DOT&E response to the question came out of a meeting, or meetings, in the office of the Director of DOT&E at the time. Wording was discussed and the Director determined what the wording of DOT&E's response should be. He directed me to provide that response to the contracting officer and I did so in the e-mail message of 1 June 2004.

Comments Related to JT&E Support. The Director stated that the JT&E program is not connected with the operational test and evaluation of system acquisitions and is not relevant to DOT&E's roles, responsibilities, and functions associated with operational test and evaluation under 10 U.S.C. 2399. He also stated that the results obtained from the JT&E program provide the Combatant Commanders recommendations for potential changes to tactics, training, and procedures, as well as associated training products. The results are also used to generate "lessons learned" and may, on an ancillary basis, be used to suggest improvements to existing capabilities. The Director further stated that after being assigned oversight of the JT&E program in 2004, he recognized that the existing JT&E contract structure had the potential for OCI issues solely within the JT&E program and took action to avoid that risk by establishing a new contract structure and this fact is not acknowledged in the report.

Our Response. We agree the JT&E support is not relevant to DOT&E's roles, responsibilities, and functions associated with operational test and evaluation under 10 U.S.C. 2399; however, there is the potential for SAIC to have OCIs as defined by Subpart FAR 9.5. We recognize that the Director modified the contract structure after being assigned the program; however, its enhanced controls are still insufficient to prevent SAIC from being put in the position to favor its own products. In May 2009, the U.S. Central Command Science Advisor working on a Quick Reaction Test Working Group for the JT&E Program designated an SAIC contract employee to represent U.S. Central Command at a June 2009 Quick Reaction Test Working Group meeting. The SAIC employee, working under contract number W91C9G-07-D-0002 described in our report, was authorized to speak and execute actions, to include voting on behalf of the Science Advisor during the a June 2009 meeting. The purpose of the meeting was a review of recent Quick Reaction Test nominations in order to provide a prioritized listing to the Executive Steering Group for approval and funding.

Comments on the Need for the Government to Perform an Independent Review of its Own Concerning OCI. The Director stated that the contractor is in the best position to identify OCIs and took exception to the position that the Government needs to conduct an independent review concerning OCI issues and not rely on the contractor to make such determinations.

Our Response. We believe there is an inherent internal control problem relying solely on the contractor to identify OCIs and made the recommendations in this report to address the problem.

Recommendations, Management Comments, and Our Response

1. We recommend that the Commander, Future Combat Systems Program Office:

a. Discontinue obtaining advisory and assistance services from the Science Application International Corporation, a Future Combat System developer, unless a waiver is obtained from the agency head and the waiver request and decision are included in the contract file as required by Federal Acquisition Regulation Subpart 9.5.

b. Determine whether the command's advisory and assistance services requirements would be more appropriately met by Government employees.

Future Combat Systems Program Office Comments

The Program Executive Office, Integration (formerly the Program Manager, Future Combat Systems, Brigade Combat Team), agreed with the recommendations. The Program Office will immediately refrain from acquiring advisory and assistance services from SAIC on any other system developer where such effort equates to an OCI that cannot be avoided, neutralized, or mitigated in accordance with FAR Subpart 9.5. The Program Office is also assessing whether its advisory and assistance services requirements could be better met by Government employees.

Our Response

The Program Executive Office, Integration, comments are responsive, and the actions meet the intent of the recommendations.

2. We recommend that the Commander, Developmental Test Command:

a. Determine whether it's appropriate to obtain advisory and assistance services from the Science Application International Corporation, Northrop Grumman, or any other contractor that has significant involvement in the development of DoD systems unless a waiver is obtained from the agency head and the waiver request and decision are included in the contract file as required by Federal Acquisition Regulation Subpart 9.5.

Developmental Test Command Comments

The Chief of Staff, ATEC, agreed with the recommendation and stated that ATEC and its subordinate commands devoted considerable effort to prevent potential OCIs from occurring. He further stated that although a 10 U.S.C. 2399 conflict was not subject to waiver, ATEC was diligently working to prevent any OCI and has not pursued seeking waivers in accordance with FAR Subpart 9.5. He also stated that DTC will not be obtaining contractor support from SAIC for FY 2010, as the FCS Program Office has decided not to fund the support. However, the DTC test centers

are using Northrop Grumman, CSC, and Lockheed Martin personnel to augment the Government workforce. The Chief of Staff also stated that the test centers would not be able to accomplish their mission without the use of contractor support personnel and that they are continuously working with ATEC to identify appropriate restrictions and to ensure oversight and management is in place.

Our Response

The Chief of Staff, ATEC, comments are partially responsive. If DTC plans to continue to use Northrop Grumman, CSC, and Lockheed Martin personnel to augment the test centers' Government workforce, the Command needs to obtain a waiver from the contracting agency head in accordance with FAR 9.503. We request that the Chief of Staff provide additional comments in response to the final report.

b. Determine whether the command's advisory and assistance services requirements would be more appropriately met by Government employees.

Developmental Test Command Comments

The Chief of Staff, ATEC, agreed with the recommendation and stated that ATEC was reviewing what the right mix of Government and support contractors should be, consistent with DOD and congressional guidance.

Our Response

The Chief of Staff, ATEC, comments are responsive, and the actions meet the intent of the recommendation.

3. We recommend that the Director of Operational Test and Evaluation:

a. Determine whether it is appropriate to obtain advisory and assistance services from the Science Application International Corporation or any other contractor that has significant involvement in development of DoD systems that the Director is or will overseeing. If the Director determines that it is essential to use the same contractor, appropriate waiver procedures should be followed as required by 10 U.S.C. 2399 and Federal Acquisition Regulation Subpart 9.5.

Director of Operational Test and Evaluation Comments

The Director agreed with the recommendation to determine whether it is appropriate to obtain advisory services from any contractor that has significant involvement in the development of systems that the Director is overseeing or will oversee.

Our Response

The Director's comments are partially responsive. The Director did not provide comments or a timeframe as to when DOT&E would determine if it was appropriate to obtain advisory services from the same contractors that have significant involvement in the development of DoD systems that are under, or will be under, the Director's oversight. We request that the Director provide comments in response to the final report that clarify his

position as to whether it is or is not appropriate to obtain advisory services from contractors involved in the development of DoD systems that are under, or will be under, the Director's oversight.

b. Determine whether the command's advisory and assistance services requirements would be more appropriately met by Government employees.

Director of Operational Test and Evaluation Comments

The Director agreed with the recommendation and stated that a comprehensive review of personnel requirements would be undertaken to develop a plan for the future use of both Government and contractor personnel and will take action to increase the allocation of Government personnel positions if appropriate.

Our Response

The Director's comments are responsive, and the actions meet the intent of the recommendation.

4. We recommend that the Commander, Army Test and Evaluation Command determine whether the command's advisory and assistance services requirements would be more appropriately met by Government employees.

Army Test and Evaluation Command Comments

The Chief of Staff, ATEC, agreed with the recommendation and noted that while using only Government employees to meet requirements would likely eliminate some potential OCIs, he disagreed with adopting an all Government workforce.

Our Response

The Chief of Staff, ATEC, comments are responsive, and no further comments are required. Additionally, we did not advocate an all Government workforce, but whether such advisory and assistance services were more appropriately met by Government employees to avoid OCIs. Otherwise, a waiver should be obtained.

5. We recommend that the Commander, Army Evaluation Center:

a. Determine whether it is appropriate to obtain advisory and assistance services from the Science Application International Corporation, Northrop Grumman, or any other contractor that has significant involvement in the development of DoD systems that the Command is or will be overseeing. If the Commander determines that it is essential to use the same contractor, appropriate waiver procedures should be followed, as required by Federal Acquisition Regulation Subpart 9.5 for non-Title 10 U.S.C. 2399 support.

b. Determine whether the command's advisory and assistance services requirements would be more appropriately met by Government employees.

Army Evaluation Center Comments

The Chief of Staff, ATEC, agreed with the recommendations and stated that ATEC and its subordinate commands devoted considerable effort to prevent potential OCIs from occurring. While a 10 U.S.C. 2399 conflict was not subject to waiver, ATEC was diligently working to prevent any OCIs and has not pursued seeking waivers in accordance with FAR Subpart 9.5. The Chief of Staff also stated that no support from either SAIC or Northrop Grumman has been or will be used by AEC in the evaluation of the FCS. He further stated that ATEC was reviewing what the right mix of Government and support contractors should be, consistent with DOD and congressional guidance.

Our Response

The Chief of Staff, ATEC, comments are responsive, and the actions meet the intent of the recommendations.

6. We recommend that the Commander, Operational Test Command:

a. Determine whether it is appropriate to obtain advisory and assistance services from Computer Sciences Corporation or any other contractor that has significant involvement in the development of DoD systems that the Command is or will be overseeing. If the Commander determines that it is essential to use the same contractor, appropriate waiver procedures should be followed, as required by Federal Acquisition Regulation Subpart 9.5 for non-Title 10 U.S.C. 2399 support.

b. Determine whether the command's advisory and assistance services requirements would be more appropriately met by Government employees.

U.S. Army Operational Test Command Comments

The Chief of Staff, ATEC, agreed with the recommendations and stated that ATEC and its subordinate commands devoted considerable effort to prevent potential OCIs from occurring. While a 10 U.S.C. 2399 conflict was not subject to waiver, ATEC was diligently working to prevent any OCI and has not pursued seeking waivers under FAR Subpart 9.5. The Chief of Staff also stated that OTC had determined that it was inappropriate to obtain advisory and assistance services from CSC or other major system developers as test support contractors. As such, OTC discontinued using CSC for support in October 2007 and will terminate its advisory and assistance services contract with General Dynamics by November 2009. The Chief of Staff also stated that ATEC was reviewing what the right mix of Government and support contractors should be, consistent with DOD and congressional guidance.

Our Response

The Chief of Staff, ATEC, comments are responsive, and the actions meet the intent of the recommendations.

7. We recommend that the Director, Defense Procurement and Acquisition Policy:

a. Develop a Defense Federal Acquisition Regulation Supplement standard advisory and assistance services organization conflict of interest clause, which precludes contractors that are involved in the development, production, or testing of a system for a military department from providing technical advice to the program office for that system or from participating in activities impacting the operational test and evaluation of that system unless appropriate waivers are obtained. The clause should make it incumbent on the proposing contractor to identify in their proposal any work that that they are or have performed either under prime contract or subcontract related to the development or supply of a DoD system. The clause should also require the contractor to disclose any changes that could create potential conflicts during the life of the contract, and potentially require a recertification of disclosure of any changes upon execution the annual option to extend the contract.

b. Emphasize to the acquisition community the importance of complying with Federal Acquisition Regulation Subpart 9.5 and the significance of not placing contractors in positions to make decisions that favor their own capabilities and that any decisions to waive the requirements must be adequately supported and documented in the contract files.

Defense Procurement and Acquisition Policy Comments

The Director, Defense Procurement and Acquisition Policy, agreed with the recommendations and stated that he will recommend a clause when formulating related clauses under the Defense Federal Acquisition Regulation Supplement Case 2009-015, “Organizational Conflicts of Interest in Major Defense Acquisition Programs.” If that case is not the appropriate venue, the Director will recommend the initiation of a new case to address the issue. The Director also stated that he would issue a memorandum emphasizing the importance of complying with FAR OCI provisions after the FAR Acquisition Law Team issues its final rule for a related FAR case to ensure that he does not issue conflicting guidance.

Our Response

The Director, Defense Procurement and Acquisition Policy, comments are responsive, and the actions meet the intent of the recommendations.

Appendix A. Scope and Methodology

We conducted this performance audit from June 2007 through August 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our finding and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives.

Our review focused on whether the same engineering and technical analysis contractors that participated in (or are participating in) the development, production, or testing of the FCS were also involved with the operational testing for such systems. To make this determination, we reviewed documentation related to the contract actions issued between FY 2000 and FY 2008 to support the DOT&E, the FCS program office, and the Army test and evaluation missions. This was a particularly challenging task because the Army employed the LSI concept to develop the FCS and much work had been turned over to support contractors. Thus, it was very difficult to locate the responsible Army officials. Further, the responsibility for FCS was distributed among numerous geographically dispersed commands, subordinate commands, and centers due to the breadth and complexity of various aspects of the development and testing of the family of 14 manned and unmanned subsystems being networked together under the \$159 billion FCS program. The team performed field work at the following organizations:

- U.S. Army Future Combat System Brigade Combat Team Program Manager (Warren, Michigan)
 - AMCOM (Huntsville, Alabama)
 - U.S. Army Armaments Command (Picatinny, New Jersey)
 - Combined Test Organization (Aberdeen, Maryland)
- Director of Operation Test and Evaluation (Arlington, Virginia)
 - Land and Expeditionary Warfare Directorate (Washington, D.C.)
 - Joint Test and Evaluation Program Manager (Arlington, Virginia)
- U.S. Army Test and Evaluation Command (Alexandria, Virginia)
 - U.S. Army Developmental Test Command (Aberdeen, Maryland)
 - White Sand Missile Range (White Sands, New Mexico)
 - Electronic Proving Ground (Fort Huachuca, Arizona)
 - U.S. Army Operational Test Command (Fort Hood, Texas)
 - U.S. Army Evaluation Center (Alexandria, Virginia)
 - Combined Test Organization (Aberdeen, Maryland)

In addition, most of the organizations used contracting activities outside of their command to award and administer their contract actions. For example, the FCS program office sent funds to the DTC, through the Combined Test Organization and ATEC, for

FCS developmental testing. DTC, in turn, transferred the money to its Redstone Technical Test Center which used the funds to pay for work performed under the AMCOM Express BPA which was administered by AMCOM.

In addition, to evaluate the legitimacy of the allegations made to the Defense hotline, we also met with representatives from Boeing, SAIC, and NewTec to obtain information relating to SAIC's role with FCS.

Use of Computer-Processed Data

We used computer-processed data produced by the U.S. Bureau of Labor Statistics' consumer price index calculator to assess whether DOT&E reliance on services contractors for fulfilling its advisory services requirements had increased since our 1991 audit. To verify the reliability of that information, we compared the calculator's inflation adjusted values to amounts we calculated from historical consumer price index data. Nothing came to our attention as a result of performing these comparisons that caused us to doubt the reliability of the values produced by the consumer price index calculator.

Prior Coverage

The Government Accountability Office (GAO) and the DoD IG have issued five reports that either discussed FCS or OCI-related issues. Unrestricted GAO reports can be accessed over the Internet at <http://www.gao.gov>. Unrestricted DoD IG reports can be accessed at <http://www.dodig.mil/audit/reports>.

GAO

GAO Report No. GAO-08-638T, "Defense Acquisitions, 2009 Review of Future Combat System Is Critical to Program's Direction," April 10, 2008

GAO Report No. GAO-08-467SP, "Defense Acquisitions, Assessments of Selected Weapon Systems," March 31, 2008

GAO Report No. GAO-07-380, "Defense Acquisitions, Role of Lead System Integrator on Future Combat Systems Program Poses Oversight Challenges," June 6, 2007

GAO Report No. GAO-07-376, "Defense Acquisitions, Key Decisions to Be Made on Future Combat System (FCS)," March 15, 2007

DoD IG

DoD IG Report No. 91-115, "Consulting Services Contracts for Operational Test and Evaluation," August 22, 1991

Appendix B. Hotline Complaint

Allegation 1: SAIC has an OCI issue that should have prevented it from being considered for the award.

Audit Results: The allegation was substantiated. SAIC supports the FCS systems of systems development and integration efforts including the design, development, integration, experimentation, assessment, verification, demonstration, test planning, execution, and evaluation activities for the FCS family of systems. SAIC also provides Program Management, Business Management, and Supplier Management support. Clearly, SAIC is significantly involved in the development of a system under, or will be under, DOT&E's oversight and therefore should have been excluded.

Allegation 2: SAIC did not acknowledge the importance of its role in FCS for fear of being forced from the competition based on the Government's guidelines and rules.

Audit Results: The allegation was substantiated. Although SAIC stated that it was Boeing's primary commercial subcontractor for the Army's FCS LSI contract, it did not recognize the significance of the nature of the work it performed under the contract. Specifically, in its proposal, SAIC stated:

[The] LSI contract is a system integration contract, not a development (supply-the-system or maintain-the-system) contract. The contract is a nontraditional acquisition program in which the role of LSI is somewhat analogous to that of a program office. The LSI team, with Boeing as the lead contractor and SAIC the primary subcontractor will:

- will work in partnership with the Army and DARPA
- have systems integration responsibility for the FCS Program."

It should be noted that FCS program manager has overall responsibility to develop, procure, and field the FCS and it would be inappropriate for the LSI for the program manager to support DOT&E. The FCS program has received \$11.4 billion of research, development, test, and evaluation funds through FY 2007 that were used to fund the Boeing/SAIC LSI efforts.

Allegation 3: DOT&E misrepresented the role of an LSI and did not properly research SAIC roles in procuring critical subsystems of the FCS.

Audit Results: The allegation was substantiated. Although DOT&E was aware of SAIC's role as a LSI on the Army FCS program, DOT&E did not assess whether their work in that capacity constituted significant involvement in the development of the FCS.

Appendix C. Weapon Systems Acquisition Reform Act of 2009

Public Law 111-23, “Weapon Systems Acquisition Reform Act of 2009,” became law on May 22, 2009, to improve the organization and procedures of the Department of Defense for the acquisition of major weapon systems, and for other purposes. Section 207 of the Act addresses OCI issues. Section 207 states:

SEC. 207. ORGANIZATIONAL CONFLICTS OF INTEREST IN MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) **REVISED REGULATIONS REQUIRED.**—Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall revise the Defense Supplement to the Federal Acquisition Regulation to provide uniform guidance and tighten existing requirements for organizational conflicts of interest by contractors in major defense acquisition programs.

(b) **ELEMENTS.**—The revised regulations required by subsection (a) shall, at a minimum—

(1) address organizational conflicts of interest that could arise as a result of—

(A) lead system integrator contracts on major defense acquisition programs and contracts that follow lead system integrator contracts on such programs, particularly contracts for production;

(B) the ownership of business units performing systems engineering and technical assistance functions, professional services, or management support services in relation to major defense acquisition programs by contractors who simultaneously own business units competing to perform as either the prime contractor or the supplier of a major subsystem or component for such programs;

(C) the award of major subsystem contracts by a prime contractor for a major defense acquisition program to business units or other affiliates of the same parent corporate entity, and particularly the award of subcontracts for software integration or the development of a proprietary software system architecture; or

(D) the performance by, or assistance of, contractors in technical evaluations on major defense acquisition programs;

(2) ensure that the Department of Defense receives advice on systems architecture and systems engineering matters with respect to major defense acquisition programs from federally funded research and development centers or other sources independent of the prime contractor;

(3) require that a contract for the performance of systems engineering and technical assistance functions for a major defense acquisition program contains a provision prohibiting the contractor or any affiliate of the contractor from participating as a prime contractor or a major subcontractor in the development or construction of a weapon system under the program; and

(4) establish such limited exceptions to the requirement in paragraphs (2) and (3) as may be necessary to ensure that the Department of Defense has continued access to advice on systems architecture and systems engineering matters from highly-qualified contractors with domain experience and expertise, while ensuring that such advice comes from sources that are objective and unbiased.

(c) CONSULTATION IN REVISION OF REGULATIONS.—

(1) RECOMMENDATIONS OF PANEL ON CONTRACTING INTEGRITY.—Not later than 90 days after the date of the enactment of this Act, the Panel on Contracting Integrity established pursuant to section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364; 120 Stat. 2320) shall present recommendations to the Secretary of Defense on measures to eliminate or mitigate organizational conflicts of interest in major defense acquisition programs.

(2) CONSIDERATION OF RECOMMENDATIONS.—In developing the revised regulations required by subsection (a), the Secretary shall consider the following:

(A) The recommendations presented by the Panel on Contracting Integrity pursuant to paragraph (1).

(B) Any findings and recommendations of the Administrator for Federal Procurement Policy and the Director of the Office of Government Ethics pursuant to section 841(b) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110–417; 122Stat. 4539).

(d) EXTENSION OF PANEL ON CONTRACTING INTEGRITY.—Subsection(e) of section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007 is amended to read as follows:

(e) TERMINATION.—

(1) IN GENERAL.—Subject to paragraph (2), the panel shall continue to serve until the date that is 18 months after the date on which the Secretary of Defense notifies the congressional defense committees of an intention to terminate the panel based on a determination that the activities of the panel no longer justify its continuation and that concerns about contracting integrity have been mitigated.

(2) MINIMUM CONTINUING SERVICE.—The panel shall continue to serve at least until December 31, 2011.

Defense Procurement and Acquisition Policy Comments



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

SEP 29 2009

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL AND DIRECTOR
ACQUISITION AND CONTRACT MANAGEMENT,
DoDIG

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS

SUBJECT: [REDACTED] Response to DoDIG Draft Report, "Contracted Advisory and Assistance Services for the U.S. Army Future Combat Systems," August 21, 2009 (Project No. D2007-D000CH-0211.000) *ns 9/30/09*

As requested, I am providing responses to the general content and recommendations contained in the subject report.

Recommendation 7:

a. Develop a Defense Federal Acquisition Regulation Supplement standard advisory and assistance services organization conflict of interest clause, which precludes contractors that are involved in the development, production, or testing of a system for a military department from providing technical advice to the program office for that system or from participating in activities impacting the operational test and evaluation of that system unless appropriate waivers are obtained. The clause should make it incumbent on the proposing contractor to identify in their proposal any work that they are or have performed either under prime contract or subcontract related to the development or supply of a DoD system. The clause should also require the contractor to disclose any changes that could create potential conflicts during the life of the contract, and potentially require a recertification of disclosure of any changes upon execution the annual option to extend the contract.

b. Emphasize to the acquisition community the importance of complying with Federal Acquisition Regulation Subpart 9.5 and the significance of not placing contractors in positions to make decisions that favor their own capabilities and that any decisions to waive the requirements must be adequately supported and documented in the contract files.

[REDACTED]

Defense Procurement and Acquisition Policy Comments

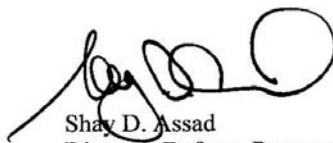
Response:

Concur. The Director, Defense Procurement and Acquisition Policy (DPAP), will recommend a clause with respect to advisory and assistance services organization conflict of interest (OCI) when formulating related clauses under the Defense Federal Acquisition Regulation Supplement (DFARS) Case 2009-015, Organizational Conflicts of Interest in Major Defense Acquisition Programs. If this case is not the appropriate venue for inclusion, DPAP will recommend the initiation of a new DFARS case to address this specific issue regarding assistance and advisory services.

NOTE: A current Federal Acquisition Regulation (FAR) Case 2007-018, Organizational Conflicts of Interest, considers whether the current guidance on OCIs addresses the current needs of the acquisition community or whether providing standard provision or clause, or a set of such provisions and clauses might be helpful. The FAR Acquisition Team proposes a rewrite of Subpart 9.5 and removes OCI guidance from Part 9, Contractor Qualifications, and moves the related information to Part 3, Improper Business Practices and Personal Conflicts of Interest. The proposed rule is under review by the Defense Acquisition Regulation Council and the Civilian Agency Acquisition Council prior to publication in the Federal Register. A 60-day public comment period followed by review and disposition of comments by the FAR Acquisition Law Team will proceed before issuance of the final rule.

To prevent a conflict in guidance provided to the acquisition community due to the impending change, DPAP proposes to wait until the final rule is implemented to issue a memorandum emphasizing the importance of complying with FAR Subpart 9.5 or Subpart 3 as changed.

Please contact [REDACTED] or email at [REDACTED] if additional information is required.



Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

[REDACTED]

Department of the Army (Future Combat Systems Program Office) Comments



REPLY TO
ATTENTION OF

SFAE-I

DEPARTMENT OF THE ARMY
PROGRAM EXECUTIVE OFFICE
INTEGRATION
325 J.S. MCDONNELL BOULEVARD
MAILCODE: S306-5155
HAZELWOOD, MISSOURI 63042

8 October 2009

MEMORANDUM FOR Department of Defense, Office of Inspector General, 400 Army
Navy Drive, Arlington, VA 22202-4704

SUBJECT: Draft Report, Audit of Contracted Advisory and Assistance Services for the
U.S. Army Future Combat Systems (Project No. D2007-D000CH-0211.000)

1. Reference DODIG memorandum, 21 August 2009, subject: Contracted Advisory and Assistance Services for the U.S. Army Future Combat Systems (Project No. C2007-D000CH-0211.000).
2. We concur with the report and recommendation #1. Specific comments to the audit recommendation are enclosed.
3. The TACOM Internal Review and Audit Compliance Office will track the open actions to the recommendations through completion and conduct a follow-up review to ensure implementation.
4. Thank you for your support.

Encl

A handwritten signature in cursive script, reading "Steven K. Draper".

STEVEN K. DRAPER
DPM, Operations
Program Executive Office, Integration

Department of the Army (Future Combat Systems Program Office) Comments

**Program Manager-Future Combat Systems (BCT)
Reply to DODIG Draft Report,
Contracted Advisory and Assistance Services for the U.S. Army Future Combat Systems
(Project No. D2007-D000CH-0211.000)**

Objective: DoDIG's overall objective was to determine whether the same engineering and technical analysis (services) contractors that participated in (or are participating in) the development, production, or testing (development) of the FCS were also involved in the operational testing of the systems. The scope of the audit was expanded after we determined that SAIC was also under contract to provide advisory and assistance services to the FCS program office and various Army test agencies.

DoDIG Conclusion: DODIG reported that the solicitation provisions and contract clauses that DOT&E, the Army FCS Program Office, and the Army test agencies used to prevent FCS development contractors from providing technical direction or supporting the operational test and evaluation of the system did not prevent the same contractors from supporting development. DODIG also didn't identify any waivers to support and document decisions to use the same contractors when a conflict of interest was apparent.

Additional facts: "None"

Recommendation 1: DODIG recommends that the Commander, FCS Program Office:

- a. Discontinue obtaining advisory and assistance services from the Science Application International Corporation, a Future Combat System developer, unless a waiver is obtained from the agency head and the waiver request and decision are included in the contract file as required by Federal Acquisition Regulation Subpart 9.5.
- b. Determine whether the command's advisory and assistance services requirements would be more appropriately met by Government employees.

Program Manager, FCS:

a. "Concur." With the exception of any effort associated with PM FCS's SDD contract with The Boeing Company, to which SAIC is a subcontractor, Program Executive Office, Integration (PEO I) will immediately refrain from acquiring advisory and assistance services from SAIC for any PEO I-related effort, where such effort equates to an Organizational Conflict of Interest, which cannot be avoided, neutralized or mitigated, in accordance with FAR Subpart 9.5. In the event that a waiver is obtained for such services, PM FCS will ensure that the Contracting Officer includes the waiver request and decision in the contract file. PM FCS will assist the Contracting Officer in analyzing planned acquisitions in order to identify and evaluate potential organizational conflicts of interest, as well as in developing any necessary solicitation provisions and contract clauses.

b. "Concur." PEO I is currently assessing whether its current SETA/CAAS requirements can be met by in-house Government employees. Target date for completing this action is November 6, 2009.

Department of the Army (Army Test and Evaluation Command) Comments



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TEST AND EVALUATION COMMAND
4501 FORD AVENUE
ALEXANDRIA VA 22302-1458

CSTE-IR

21 September 2009

MEMORANDUM FOR Department of Defense Office of Inspector General

SUBJECT: ATEC Response to Draft DODIG Report of Audit of Contracted Advisory and Assistance Services for Future Combat Systems- Project No. D2007-D000CH-0211.000

1. This provides a U.S. Army Test and Evaluation Command (ATEC) response to the DoDIG Draft Report concerning Contract and Advisory and Assistance Services for the Future Combat Systems. The input from ATEC subordinate command activities, Operational Test Command (OTC), Developmental Test Command (DTC) and Army Evaluation Center (AEC), are consolidated herein.
2. The complexities of addressing current test and evaluation requirements and methodologies often necessitate the use of short-term but highly skilled technical experts. On the other hand, such testing also can involve relatively junior personnel in, among other things, conducting basic data collection. Contractor personnel often provide ATEC with both the surge manpower and technical expertise to meet ongoing mission requirements. ATEC has placed a significant focus on addressing and precluding organizational conflicts of interest (OCI) when working with contractors. These efforts include:
 - a. All Technical Specialists and Contracting Officer Representatives (CORs) are trained annually on the laws and regulations pertaining to OCI. Personnel are advised that investigation must be performed with regard to the contractor relationship(s) and any potential involvement with companies that could lead to a conflict of interest. The difficulty of this endeavor is illustrated by the Draft Report discussion of the New Mexico Technology Group (NewTec) that was belatedly determined to be a joint venture involving several different contractors.
 - b. The ATEC Chief Counsel has integrated OCI information into the annual ethics training classes required by all ATEC employees and at the Test and Evaluation Basic Course (TEBC). The Chief Counsel has also briefed senior ATEC officials and taken advantage of routine meetings, such as a Program Budget Advisory Committee (PBAC) meeting, to emphasize OCI concerns.
 - c. ATEC is initiating an outreach program to its Subordinate Command Activities that will address conflict of interest matters. The program, which will entail site visits by senior ATEC

Department of the Army (Army Test and Evaluation Command) Comments

CSTE-IR

SUBJECT: ATEC Response to Draft DODIG Report of Audit of Contracted Advisory and Assistance Services for Future Combat Systems- Project No. D2007-D000CH-0211.000

personnel to major test centers, will be directed toward senior ATEC personnel and will focus heavily on OCI matters.

d. ATEC continues to examine internal processes to preclude any future OCI from arising. This review process includes an examination of disclosure statements to be included in contracts, adoption of improved contract terminology and ensuring that contracting personnel scrutinize contractor submissions for internal agency validation.

3. The Draft Report makes several specific recommendations that require comment.

a. The Draft Report recommends that ATEC and its subordinate command activities consider whether advisory and assistance service requirements would be more appropriately met by Government employees. ATEC does not concur with adopting an all government workforce.

(1) While in-sourcing by using only government employees to meet our requirements would likely eliminate some number of potential OCI, such an action would also take away the capability to quickly and economically meet surge workforce numbers when the testing mission warrants. Contractors are not suitable to perform every testing mission but they do offer significant advantages and flexibilities such as rapid hiring, outreach to experts, less supervision, and rapid drawdown that would be eliminated if ATEC went to an all government workforce.

(2) ATEC is currently reviewing what the right mix of government and support contractors should be, consistent with DoD and Congressional guidance, to refine "organizational conflicts of interest" and what are "inherently governmental test and evaluation functions."

b. The Draft Report also recommends consideration of whether it is appropriate to obtain advisory and assistance services from contractors that have significant involvement in the development of DoD systems unless a waiver is obtained from the agency head and a waiver request and decision are included in the contract file, as required by Federal Acquisition Regulation, subpart 9.5 for non-Title 10 U.S.C. § 2399 support.

ATEC and its subordinate commands have devoted considerable time and effort to prevent potential OCI's from occurring. While a 10 U.S.C. § 2399 conflict is not subject to waiver, ATEC works diligently to prevent any OCI and has not pursued seeking waivers under FAR Subpart 9.5. The following specific comments are offered:

Department of the Army (Army Test and Evaluation Command) Comments

CSTE-IR

SUBJECT: ATEC Response to Draft DODIG Report of Audit of Contracted Advisory and Assistance Services for Future Combat Systems- Project No. D2007-D000CH-0211.000

(1) Army Evaluation Center: AEC concurs with the recommendation that due diligence when utilizing advisory and assistance services from contractors significantly involved in DOD systems development is necessary.

AEC does not obtain advisory and assistance services from any contractors that are involved in the development of any system for which AEC will be evaluating. This has been and continues to be AEC policy, not just for FCS, but for all programs evaluated by AEC. SAIC's support to AEC referenced in the Report was carefully screened to ensure no OCI existed. No support from either SAIC or Northrop Grumman has been or will be used in the evaluation of FCS.

The Draft Report notes on pages 37-41 that AEC has specific task orders with SAIC that raised concerns. SAIC is currently not working on any task orders related to Future Combat Systems (FCS). It should be noted that Task Order No. 1, referenced in the Report, is closed and no further work is being performed under that Task Order. With regard to Task Order No. 27, issued on 6 March 2008 that extends to 19 December 2010, SAIC has not been given any tasks to perform that relate to FCS nor will they be given any FCS related tasks in the future. It should also be noted that the two Northrop Grumman Task Orders referenced in the Report (Task Order No. 5 and Task Order No. 23) are expired and closed with no further work being done for this effort. AEC continues to review ongoing contracts for OCI issues and will eliminate from consideration and/or terminate for convenience any contractors that have an OCI.

(2) Developmental Test Command: DTC concurs with the recommendation that due diligence when utilizing advisory and assistance services from contractors significantly involved in DOD systems development is necessary.

DTC HQs will not have any contractor support from SAIC, funded by the FCS program office, effective on or about December 2009. The program office has decided not to fund this support for FY10. That said, the SAIC support provided has been administrative in nature - providing scheduling information, linking reports in databases, tracking safety document suspense, etc. Therefore, SAIC employees performing administrative type tasks at DTC HQs have no influence on test planning or execution functions. DTC Test Centers do have contracts with Northrop Grumman, CSC, and Lockheed Martin to augment the government workforce with contractor personnel. Without use of contractor support personnel the test centers would not be able to

Department of the Army (Army Test and Evaluation Command) Comments

CSTE-IR

SUBJECT: ATEC Response to Draft DODIG Report of Audit of Contracted Advisory and Assistance Services for Future Combat Systems- Project No. D2007-D000CH-0211.000

accomplish their mission. DTC continues to work within ATEC to help to identify appropriate restrictions and to ensure oversight and management involvement is in place.

(3) Operational Test Command: OTC concurs with the recommendation that due diligence when utilizing advisory and assistance services from contractors significantly involved in DOD systems development is necessary.

OTC has already made the determination that it is not appropriate to obtain advisory and assistance services from Computer Science Corporation (CSC) or major system developers as test support contractors. CSC has not been an OTC support contractor since October 2007 as the contract utilizing a joint venture with CSC and another support contractor expired in October 2007; consequently, this recommendation concerning CSC is no longer applicable. OTC is also in the process of terminating a contract with General Dynamics in November 2009 (by not exercising the option year) related to the acquisition of FC Business Systems by that firm. As the Draft Report notes, there was apparently no requirement for FC Business Systems to notify the Government that they had been acquired by General Dynamics. This scenario also helps to underscore the considerable difficulties of managing contracts over the course of several years when significant changes take place in the commercial arena.

4. The following additional comments are offered.


a. Federal Funded Research and Development Centers (FFRDC) can provide ATEC with greater flexibilities to meet surge and specialized manpower requirements. However, there are currently limitations that significantly restrict the use of FFRDCs.

b. Page 57, para. 4: The Report misidentifies ATEC – Should be “U.S. Army Test and Evaluation Command.”

c. Page 41: The Report references the New Mexico Technology Group and subsequently refers to them as “The Group.” There have been considerable internal discussions over this joint venture but we have consistently referred to them as NewTec. See also: www.newtec11c.com/. We recommend that the Report use the NewTec nomenclature to ensure consistency with cited contract provisions and prior references.

Department of the Army (Army Test and Evaluation Command) Comments

FOR THE COMMANDER:

A handwritten signature in dark ink, appearing to read 'R. Burke', with a horizontal line extending from the end of the signature.

RODERICK BURKE, SR.
COL, GS
Chief of Staff

Director of Operational Test and Evaluation Comments



OPERATIONAL TEST
AND EVALUATION

OFFICE OF THE SECRETARY OF DEFENSE
1700 DEFENSE PENTAGON
WASHINGTON, DC 20301-1700

SEP 30 2009

MEMORANDUM FOR THE INSPECTOR GENERAL

SUBJECT: Contracted Advisory Services for the U.S. Army Future Combat Systems
(Project No. D2007-D000CH-0211.000)

Thank you for the opportunity to review and comment on the draft report. The Director, Operational Test and Evaluation (DOT&E) comments on the draft report are directed exclusively toward the report contents concerning DOT&E.

DOT&E concurs with the Inspector General's (IG) recommendation to determine if it is appropriate to obtain advisory services from any contractor that has significant involvement in development of systems that the Director is overseeing or will oversee. Any such determination DOT&E makes will be consistent with implementation of the Weapon Systems Acquisition Reform Act of 2009.

DOT&E does not agree that the contractual relationships between it and Science Applications International Corporation (SAIC) result in an actual organizational conflict of interest. This conclusion is based on an analysis of the contractual scope of work and the actual duties performed by SAIC personnel under various contracts. These relationships do not violate Section 2399, Title 10, United States Code (10 U.S.C. 2399) because no work performed by SAIC under either the contract for Engineering and Technical Analysis Support (ETAS) or the contracts associated with the Joint Test and Evaluation (JT&E) program are related to the operational test and evaluation of systems under DOT&E oversight. Moreover, the work SAIC performs for DOT&E constitutes analytical support only, not formulation of policy alternatives. The Institute for Defense Analyses (IDA) and MITRE, both Federally Funded Research and Development Centers (FFRDCs), are under contract to DOT&E to support the office's 10 U.S.C. 2399 responsibilities concerning oversight of operational testing or live fire testing of weapons systems. This includes establishment of criteria for data collection, performance assessment, or evaluation activities for the operational test and evaluation of systems under DOT&E oversight.

SAIC personnel are not involved in the development of test requirements or evaluation of test data for individual ongoing acquisition programs under DOT&E oversight. This is because such activity would create an OCI as addressed in the Federal Acquisition Regulations.



Director of Operational Test and Evaluation Comments

The support provided by SAIC under the ETAS contract with DOT&E included the following:

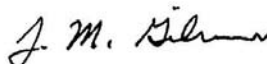
- Analysis to allow DOT&E to evaluate and improve the test and evaluation (T&E) infrastructure, T&E policy, and overall T&E capabilities;
- Analysis to allow DOT&E to identify and correct inadequacies in future test resources pertaining to operational test and evaluation;
- Database management, analysis, and development of candidate test methodologies to assist DOT&E in coordinating with the Combatant Commanders and Services information assurance and interoperability testing of fielded systems in the exercises that they conduct. (These DOT&E activities are conducted to comply with Congressional direction contained in the Report of the Committee on Appropriations (to accompany H.R. 5010). Analytical support concerning interoperability and information assurance for both fielded and ongoing acquisition programs subject to DOT&E oversight under 10 U.S.C. 2399 is provided exclusively by FFRDCs.)

DOT&E concurs with the recommendation to determine whether its needs for advisory and assistance services would be more appropriately met by Government employees. DOT&E is undertaking a comprehensive review of its personnel requirements and is developing a plan for future use of both Government and contractor personnel. Based on the results of that review, DOT&E will take action within the scope of its authority to obtain an increased allocation of Government personnel positions, as appropriate.

Concerning its 10 U.S.C. 2399 responsibilities, DOT&E will continue to rely exclusively on the FFRDC community for analytical services. Adequate FFRDC resources are and have been a longstanding DOT&E concern. Consequently, DOT&E joined with the Undersecretary of Defense for Acquisition, Technology and Logistics to request relief from currently existing limits on FFRDC resources. However, those limits are set by the Congress and not under DOT&E's control.

Detailed comments on the draft report are contained in the attachment.

My point of contact is [REDACTED].


J. Michael Gilmore
Director

Attachment:
As stated

Director of Operational Test and Evaluation Comments

DOT&E Comments on the Draft Report: Contracted Advisory Services for the U.S. Army Future Combat Systems (Project No. D2007-D000CH-0211.000)

Page i, "What We Found", First paragraph:

DOT&E does not concur that the allegations were substantiated. The statement that DOT&E has used SAIC as its primary contractor for advisory and assistance services since 1999 is not correct. As page 24 of the report acknowledges, DOT&E relies on Federally Funded Research and Development Centers (FFRDCs), primarily the Institute for Defense Analysis (IDA), for all 10 U.S.C. 2399 responsibilities related to oversight of operational or live fire testing of weapons systems. DOT&E funding for IDA support in FY2007 was \$32.8M, as compared to the total of \$8.6M provided to SAIC for the 2006 to 2007 ETAS contract year. Despite its special status as a FFRDC, IDA is nevertheless a contractor that provides contracted service to DOT&E. By referring to SAIC as DOT&E's primary contractor within the context of this paragraph, the report creates the impression that SAIC provided support for core DOT&E 10 U.S.C. 2399 responsibilities. This is not the case.

Later in the same paragraph, the report states, "DOT&E and the Army did not exercise the good judgment and sound discretion needed to prevent the existence of conflicting roles that might bias a contractor's judgment or provide it an unfair competitive advantage." DOT&E disagrees with this sentence. The contractual scope of work, DOT&E's internal structure and the actual duties performed by SAIC personnel under the contract are such that no conflicting roles existed. The report does not demonstrate a conflicting role concerning SAIC contracts or evidence of biased contractor judgment or competitive advantage for the contractor.

Page i, "What We Recommend"

DOT&E agrees that it should more rigorously assess contract awards for advisory and assistance services. DOT&E will strengthen its existing processes for awarding contracts, consistent with the requirements in the Weapon Systems Acquisition Reform Act of 2009. DOT&E does not agree that waivers were required for any of its service contracts to date because no services provided under them concerned issues related to DOT&E's 10 U.S.C. 2399 roles, responsibilities, or functions. However, if circumstances arose which substantiated the case for a waiver, DOT&E would seek one.

Page ii, "Review of Internal Controls"

The report asserts that "procedures used by those organizations to prevent contractors from providing advice on scopes of work for which their judgment may be biased as a

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result of other activities or relationships they may possess were ineffective.” This assertion is unsubstantiated. DOT&E’s leadership reviews the nature of work conducted under the service contracts to assure it is appropriate and does not result in an organizational conflict of interest (OCI). Further, none of the work performed by SAIC concerns any aspect of DOT&E’s 10 U.S.C. 2399 roles, responsibilities, or functions. DOT&E will, however, reevaluate its internal controls and strengthen them as appropriate.

Page 1, “Objectives”, First Sentence:

For clarity, DOT&E recommends that the portion of the sentence reading, “...development, production, or testing (development)...” be changed to either “...development, production, or testing (developmental)...”, or “...development, production, or developmental testing...”

Page 3, “Weapon Systems Acquisition Reform Act of 2009”

DOT&E fully supports all aspects of the Weapon Systems Acquisition Reform Act of 2009, including the provisions for prevention of OCI.

Page 4, “Director of Operational Test and Evaluation”

The second bullet in this paragraph says that DOT&E “monitors and reviews...activities of the major ranges and test facility bases to ensure adherence to approved policies and standards.” This language implies that the major ranges and test facilities bases are under DOT&E oversight. This is no longer the case. Oversight of the ranges and test facilities was transferred to the Test Resource Management Center in 2005.

Page 10, “Finding, Contracted Advisory and Assistance Services”, Last sentence.

This sentence states, “As a result, DOT&E and the Army have not exercised the good judgment and sound discretion needed to prevent the existence of conflicting roles that might bias a contractor’s judgment or provide it an unfair competitive advantage, as required by 10 U.S.C. 2399, “Operational Test and Evaluation of Defense Programs” and FAR Subpart 9.505-1, “Providing Systems Engineering and Technical Direction.” DOT&E disagrees with this sentence for the following reasons:

- The report does not provide evidence of a conflicting role related to the contracts with SAIC. As stated previously, the contractual scope of work, the existing DOT&E internal controls, and the actual duties performed by SAIC personnel under the contract are such that they did not constitute an OCI.
- As will be discussed more fully in the comment concerning ETAS support, the ETAS contract does not violate 10 U.S.C. 2399.

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Page 12, “Finding, Developing a System and Providing Advisory and Assistance Services”

Page 11

The next to last sentence says “Solicitation provisions and contract clauses used to prevent contractors from providing advisory and assistance services for systems they helped develop or produce were inadequate and ineffective,...” As stated previously, the contractual scope of work, the existing DOT&E internal controls, and the actual duties performed by SAIC personnel under the contract are such that they did not constitute an OCI. DOT&E will however review its use of solicitation provisions and contract clauses and strengthen them as appropriate, consistent with the OCI requirements in the Weapon Systems Acquisition Reform Act of 2009.

Page 24, “Director of Operational Test and Evaluation”, First Sentence

Page 23

As with the similar sentence on page i, DOT&E disagrees with characterization of SAIC as the primary DOT&E contractor.

Page 24, “ETAS Support”, First Paragraph

Page 23

DOT&E disagrees with the assertion that “...some of the support provided by SAIC under the ETAS contract raises concerns that the non-10 U.S.C. 2399 work may be indirectly crossing over into the 10 U.S.C. 2399 arena.” To support this contention, the report lists tasks performed under several ETAS delivery orders. None of the listed tasks involve SAIC personnel in the development of test requirements, test planning, or evaluation of test data for individual acquisition programs (the two “test-related” aspects of the FAR Subpart 9.5 definition of systems engineering that could potentially create an OCI for SAIC). Nor do any of the tasks involve SAIC personnel in services related to the test and evaluation of a single system (as is prohibited by 10 U.S.C. 2399). In short, the functions that are described below are associated exclusively with the collection of data and development of information that is separate and distinct from DOT&E’s 10 U.S.C. 2399 activities. Additionally, ETAS deliverables to DOT&E constitute analytical support only and are not recommendations to the Government concerning the development of policy affecting operational test and evaluation. For these reasons, there is no indirect crossover between ETAS and the 10 U.S.C. 2399 domain as alleged in the report. DOT&E agrees, however, that its contract activities and internal controls should be structured to preclude indirect crossover into the 10 U.S.C. 2399 arena. The listed SAIC tasks can be summarized as follows:

- Analysis to allow DOT&E to evaluate and improve the test and evaluation (T&E) infrastructure, T&E policy, and overall T&E capabilities;
- Analysis to allow DOT&E to identify and correct inadequacies in future test resources so far as they concern operational test and evaluation;

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- Database management, analysis, and development of candidate test methodologies to assist DOT&E in coordinating information assurance and interoperability testing of fielded systems as focus areas in exercises conducted by the Combatant Commanders and Services. These DOT&E activities comply with Congressional direction contained in the Report of the Committee on Appropriations (to accompany H.R. 5010). Evaluation services concerning interoperability and information assurance for both fielded systems and ongoing acquisition programs subject to DOT&E oversight are provided exclusively by FFRDCs.

Page 25, First Paragraph, Last Bullet

Senior technical support under the ETAS contract for Live Fire Test and Evaluation was discontinued in 2007.

Page 29, Last Paragraph

The report states, "The IG found no evidence that anyone evaluated whether SAIC was significantly involved in the development of a DoD system that DOT&E would be overseeing prior to contract award." DOT&E disagrees with the conclusion that no evaluation occurred. The exchange of information between the contracting officer and SAIC (described in the preceding report pages) establishes that the contracting officer and DOT&E were aware of SAIC's role concerning the Future Combat System (FCS) and did not consider that it was an OCI. The FAR Subpart 9.504 states that the contracting officer should "... award the contract to the apparent successful bidder unless [an OCI] is determined to exist and cannot be avoided or mitigated." In this case, as previously discussed, none of the contract tasks involve SAIC personnel in the development of test requirements or evaluation of test data for individual acquisition programs (the two "test-related" aspects of the FAR Subpart 9.5 definition of systems engineering that could potentially create an OCI for SAIC). Therefore it is reasonable that the contracting officer and DOT&E determined that there was no OCI.

Page 30-33, "JT&E Support"

The section concerning "JT&E Support" is not relevant to DOT&E's roles, responsibilities and functions associated with operational test and evaluation under 10 U.S.C. 2399. The JT&E program is not connected with the operational test and evaluation of system acquisitions. The results obtained from the JT&E program provide the Combatant Commanders recommendations for potential changes to tactics, training and procedures as well as associated training products. The results are also used to generate "lessons learned" and may on an ancillary basis be used to suggest improvements to existing capabilities.

Page 28, 2nd
Paragraph

Pages 28-32

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DOT&E was assigned oversight of the JT&E program in 2004 during a realignment of functions within OSD. DOT&E recognized the existing JT&E contract structure had the potential for OCI issues solely within the JT&E program and took action to avoid that risk by establishing a new contract structure. This fact is not acknowledged in the report. Furthermore, DOT&E disagrees that a waiver is required under 10 U.S.C. 2399 in order for DOT&E to continue obtaining services from SAIC associated with the JT&E program. This is because SAIC activity supporting the JT&E program does not involve DOT&E roles, responsibilities, or functions under 10 U.S.C. 2399.

Page 33, First Paragraph.

Page 32

The report says that the Government needs to conduct an independent review of its own concerning OCI issues and not rely on the contractor to make such determinations. DOT&E agrees that when it has knowledge of potential conflicts it should act to assure that no potential for OCI exists. However, absent knowledge on the part of the contracting officer or others involved in review of the proposal, the Government relies on the certification of the contractor. The contractor is in the best position to know the breadth and scope of its involvement in Government contracting activities across the services. The contractor is under a continuing obligation to identify and address apparent or real conflicts throughout the contract period. Once the contractor identifies a real or apparent conflict, the Government conducts an independent analysis based on the facts presented in making a determination as to whether a conflict exists.

Page 33, Second Paragraph.

Page 32

This section addresses the issue of whether it is appropriate for DOT&E to obtain advisory and assistance services from the private sector. This issue was addressed in the cover memorandum

Page 53, "Implementation of Prior Audit Corrective Measures"

Page 51

The report says that recommendations made in the IG's Report Number 91-115, "Consulting Services Contracts for Operational Test and Evaluation," August 22, 1991, were never fully implemented. As noted, DOT&E submitted recommendations to revise DoD Instruction 5000.2 as well as a draft OCI clause to the Director of Defense Procurement for consideration as suggested by the IG.

Page 53, "Extensive Use of Service Contractors"

Pages 51-53

This section is incorrect. The majority of the increased funding for contracted advisory and assistance services noted in the report occurred because DOT&E was assigned additional responsibilities by Congress and the Administration during the period spanning 1990-2009.

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During the 1987-1990 timeframe, DOT&E responsibilities were limited to operational test and evaluation. As a result of OSD reorganizations in 1999 and 2004, DOT&E was assigned additional responsibilities not associated with its 10 U.S.C. 2399 roles, responsibilities, and functions. These non-2399 responsibilities included among others, the JT&E program. In addition, the Congress has assigned DOT&E other responsibilities outside the scope of 10 U.S.C. 2399, including assessment of fielded systems for information assurance and interoperability. The aforementioned OSD reorganizations and Congressional action accounted for the majority of the increased service contract expense addressed in this section of the report.

Page 56, "OCIs"

The observations in this section were addressed above in comments concerning "Implementation of Prior Corrective Measures."

Page 61, Appendix B, Allegation 1

DOT&E disagrees that this allegation was substantiated. This is because DOT&E determined that no 10 U.S.C. 2399 OCI existed concerning any support that SAIC was to provide under the ETAS contract.

Page 57, "Recommendations"

DOT&E concurs with Recommendation 3.a. Concerning any proposed future procurement of advisory and assistance services from the private sector, DOT&E will determine if it is appropriate to procure such services from any private sector contractor "that has significant involvement in development of DOD systems that the Director is or will overseeing." Waiver processes, if found to be applicable to the circumstances, will be used.

DOT&E concurs with Recommendation 3.b. DOT&E will determine whether its "advisory and assistance requirements would be more appropriately met by Government employees." DOT&E is undertaking a comprehensive review of personnel requirements and is developing a plan for future use of both Government and contractor personnel. Based on the results of this review, DOT&E will take action within the scope of its authority to obtain increased allocation of Government personnel positions as appropriate.

Page 61, Appendix B, Allegation 2, Audit Results.

The Audit Results say that it would be "inappropriate for the program manager to support DOT&E". The FCS program manager has no organizational link to DOT&E

Pages 53-54

Pages 59-60

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and provides no support to DOT&E. Consequently, this language should be deleted from the report.

Page 61, Appendix B, Allegation 3.

DOT&E does not agree that this allegation was substantiated. There is no evidence presented to show that DOT&E misrepresented the role of a Lead Systems Integrator. The evidence presented by the IG shows that DOT&E did not consider SAIC's role in system development to be disqualifying.

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